EXPLANATORY MEMORANDUM

(EXPORT CONTROL (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2019)

(Circulated by authority of the Minister for Agriculture, Senator the Hon. Bridget McKenzie)
GENERAL OUTLINE


The transition from the 1982 Act and the AMLI Act to the 2019 Bill needs to be effectively managed. This will ensure that exports are appropriately regulated or controlled, that access to international trading markets for Australian goods is maintained and Australia’s global trading reputation as a reliable source of safe and high-quality goods is not disrupted.

The Bill is being introduced to:

- repeal the 1982 Act to allow exports to be regulated under the 2019 Bill;
- repeal the parts of the AMLI Act that deal with the export of meat and live-stock to allow those exports to be regulated under the 2019 Bill;
- repeal a number of Acts that are currently redundant or will become redundant on the enactment of the 2019 Bill;
- make consequential amendments to Commonwealth legislation to reflect the repeal of the 1982 Act and parts of the AMLI Act, including amendments to refer to the 2019 Bill; and
- deal with the transition to the 2019 Bill from the 1982 Act and parts of the AMLI Act.

Schedule 1 to this Bill will repeal 17 Commonwealth Acts as they are redundant or will become redundant on the enactment of the 2019 Bill.

Schedule 2 to this Bill will make consequential amendments to nine Commonwealth Acts to remove provisions that will be incorporated in the 2019 Bill and update references to the 2019 Bill.

Schedule 3 to this Bill will set out the application, saving and transitional provisions and will include the power of the Secretary to make transitional rules. This power is necessary to ensure a seamless transition to the measures in the 2019 Bill.

The primary focus of Schedule 3 is to ensure continuity of export controls during the transition from the old to new legislation in a way that is not administratively or operationally burdensome for the Commonwealth or business. The overall approach is one of maintaining existing policy approaches under the 1982 Act and parts of the AMLI Act, while aligning the powers, decisions and processes so that decisions made and processes followed under the 1982 Act and parts of the AMLI Act continue have effect under the 2019 Bill. To this extent,
most decisions or powers exercised under the 1982 Act and parts of the AMLI Act will transition as though they were made or exercised under specific provisions of the 2019 Bill.

The 1982 Act and parts of the AMLI Act provide similar powers to those in the 2019 Bill for the control of exports. However, there are some differences, which require some of the 1982 Act provisions to continue (or be saved) to operate until certain export control matters have been completed. This will minimise impacts on business and ensure market access for Australia’s exports is maintained.

For consistency and to facilitate implementation, the transitional provisions have been set out in the same subject order as the 2019 Bill.

**FINANCIAL IMPACT STATEMENT**

This Bill will have no financial impact on the Australian Government Budget.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The full statement of compatibility with human rights is attached to this explanatory memorandum.
ACRONYMS, ABBREVIATIONS AND COMMONLY USED TERMS

the 1982 Act  
*Export Control Act 1982.*

the 2019 Bill  
Export Control Bill 2019.

the Acts Interpretation Act  
*Acts Interpretation Act 1901.*

the AMLI Act  

this Bill  

the Criminal Code  
Schedule 1 to the *Criminal Code Act 1995.*

the Department  
the Department administered by the Minister administering the Export Control (Consequential Amendments and Transitional Provisions) Bill 2019.

the EPBC Act  
*Environment Protection and Biodiversity Conservation Act 1999.*

the Export Charges Imposition Acts  
*Export Charges (Imposition–General) Act 2015,*  
*Export Charges (Imposition–Excise) Act 2015* and  
*Export Charges (Imposition–Customs) Act 2015.*

the Guide  

the HMRDS Act  
*Horticulture Marketing and Research and Development Services Act 2000*

the Inspector–General Act  

the Minister  
the Minister administering the Export Control (Consequential Amendments and Transitional Provisions) Bill 2019.

the Regulatory Powers Act  

the Secretary  
the Secretary of the Department administered by the Minister administering the Export Control (Consequential Amendments and Transitional Provisions) Bill 2019.
NOTES ON CLAUSES

Preliminary

Clause 1  Short Title
Clause 1 will provide that the Export Control (Consequential Amendments and Transitional Provisions) Bill 2019 once enacted, will be cited as the Export Control (Consequential Amendments and Transitional Provisions) Act 2019.

Clause 2  Commencement
Subclause 2(1) will provide that each provision of this Bill specified in column 1 of the table that is set out in subclause 2(1), will commence, or will be taken to have commenced, in accordance with column 2 of that table. Any other statement in column 2 will have effect according to its terms.

Item 1 of the table in subclause 2(1) will provide that the sections 1 to 3 of this Bill (and anything else in this Bill not specified in the commencement table in subclause 2(1)) commence on the day this Bill receives the Royal Assent.

Item 2 of the table in subclause 2(1) will provide that Schedule 1 (which will deal with the repeal of a number of Acts), Schedule 2 (which will deal with consequential amendments to a number of Acts) and Schedule 3 of this Bill (which will provide application, savings and transitional provisions) will commence at the same time as clause 3 of the 2019 Bill, however, the provisions will not commence at all if the 2019 Bill does not commence.

Subclause 2(2) will provide that any information in column 3 of the table that is set out in subclause 2(1) will not be part of this Bill. Information will be able to be inserted in this column, or information in it will be able to be edited, in any published version of this Bill.

Clause 3  Schedule(s)
Clause 3 will provide that legislation that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Bill has effect according to its terms.
Schedule 1—Repeals of Acts

Schedule 1 to this Bill will repeal a number of Acts because they are redundant or will become redundant on the enactment of the 2019 Bill. The Acts listed in column 1 of the following table will be repealed for the reasons identified in column 2:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Meat and Live-stock Corporation Amendment Act 1990</td>
<td>This Act may be repealed as the Australian Meat and Live-stock Corporation Act 1977 which was amended by this Act was repealed by Act No. 69 of 1995. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Australian Meat and Live-stock Legislation (Consequential Amendments and Transitional Provisions) Act 1985</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Australian Meat and Live-stock (Quotas) Amendment Act 1995</td>
<td>This Act may be repealed as the Australian Meat and Live-stock (Quotas) Act 1990 which was amended by this Act was repealed by Act No. 167 of 2015. Therefore, this Act is redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Charges (Collection) Act 2015</td>
<td>This Act may be repealed because the collection of charges under the Export Charges Imposition Acts has been incorporated into the 2019 Bill.</td>
</tr>
<tr>
<td>Export Control Act 1982</td>
<td>The export controls set out in this Act have been incorporated into the 2019 Bill, therefore, it may be repealed.</td>
</tr>
<tr>
<td>Export Control Amendment Act 1991</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Control Amendment Act 2003</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Control Amendment (Quotas) Act 2015</td>
<td>This Act may be repealed as the amendments contained in the Act have been incorporated into the 2019 Bill.</td>
</tr>
<tr>
<td>Export Inspection Charges Collection Act 1985</td>
<td>From 1 December 2015 charges for export related activities were imposed under a new legislative framework comprising the Export Charges (Collection) Act 2015, Export Charges Imposition Acts and related subordinate legislation. This Act is therefore no longer in use and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection Charges Laws Amendment Act 1993</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection (Establishment Registration Charges) Act 1985</td>
<td>From 1 December 2015 charges for export related activities were imposed under a new legislative framework comprising the</td>
</tr>
<tr>
<td>Act</td>
<td>Repeal Reason</td>
</tr>
<tr>
<td>-------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Export Charges (Collection) Act 2015, Export Charges Imposition Acts and related subordinate legislation. This Act is therefore no longer in use and may be repealed.</td>
<td></td>
</tr>
<tr>
<td>Export Inspection (Establishment Registration Charges) Amendment Act 2014</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection (Quantity Charge) Act 1985</td>
<td>From 1 December 2015 charges for export related activities were imposed under a new legislative framework comprising the Export Charges (Collection) Act 2015, Export Charges Imposition Acts and related subordinate legislation. This Act is therefore no longer in use and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection (Quantity Charge) Amendment Act 2014</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection (Service Charge) Act 1985</td>
<td>From 1 December 2015 charges for export related activities were imposed under a new legislative framework comprising the Export Charges (Collection) Act 2015, Export Charges Imposition Acts and related subordinate legislation. This Act is therefore no longer in use and may be repealed.</td>
</tr>
<tr>
<td>Export Inspection (Service Charge) Amendment Act 2014</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
<tr>
<td>Export Legislation Amendment Act 2014</td>
<td>This Act may be repealed because the amending items have had effect. The Act is therefore redundant and may be repealed.</td>
</tr>
</tbody>
</table>
Schedule 2—Consequential amendments

Schedule 2 to this Bill will amend Acts to remove provisions that will be incorporated into the 2019 Bill and to update references to the 2019 Bill.

**Australian Meat and Live-stock Industry Act 1997**

**Item 1 Section 3 (definition of associate)**

Item 1 of Schedule 2 to this Bill will repeal the definition of “associate” from section 3 of the AMLI Act. The term is only relevant to section 25A of the AMLI Act which will be repealed with the repeal of Part 2 of the AMLI Act (see item 4 of Schedule 2 to this Bill). References to “associates” as it relates to the export of goods will be covered by the 2019 Bill.

**Item 2 Section 3**

Item 2 of Schedule 2 to this Bill will add a definition of the “Secretary” to the AMLI Act as meaning the Secretary of the Department. The definition will be needed to give effect to the remaining provisions of the AMLI Act (for example, paragraph 66(3)(a) of the AMLI Act which relates to Commonwealth’s matching payments).

**Item 3 Section 6**

Item 3 of Schedule 2 to this Bill will repeal section 6 of the AMLI Act. Section 6 deals with the application of the *Criminal Code* to all offences against the AMLI Act. As a result of the enactment of section 2.2 of the *Criminal Code*, which deals with the application of the Criminal Code to Commonwealth offences, section 6 may be repealed.

**Item 4 Parts 2 and 2A**

Item 4 of Schedule 2 to this Bill will repeal Parts 2 and 2A of the AMLI Act, which cover the control of the export of meat and live-stock products. Part 2 is divided into 4 Divisions: Division 1 – preliminary (which contains definitions used in Part 2); Division 2 – export licences for meat and live-stock; Division 4 – enforcement; and Division 5 – Report to Parliament. All matters covered by these divisions will be covered by the 2019 Bill (for example, definitions will be set out in clause 12 of the 2019 Bill; export licences will be set out in Chapter 6 of the 2019 Bill, enforcement will be set out in Chapter 10 of the 2019 Bill and the Report to Parliament will be set out in Part 6 of Chapter 11 of the 2019 Bill).

With the streamlining of the export controls into the 2019 Bill, there will no longer be a requirement to retain export licences in a separate piece of legislation. Therefore Part 2 of the AMLI Act may be repealed.

Part 2A of the AMLI Act deals with the Australian Code for the Export of Live-stock and provides that the Minister may, by legislative instrument, determine principles relating to the export of live-stock from Australia. In its place, rules made for the purpose of the 2019 Bill will be able to incorporate the *Australian Standards for the Export of Livestock*, which will be applicable to the export of live-stock.

**Item 5 Subsection 70(2)**

Item 5 of Schedule 2 to this Bill will amend subsection 70(2) of the AMLI Act to remove the reference to section 49 of the AMLI Act (section 70 deals with delegations under the AMLI Act). Section 49 will be repealed with the repeal of Part 2 of the AMLI Act (see item 4 of Schedule 2 to this Bill) therefore, there is no longer a requirement for subsection 70(2) to refer to that provision.
Item 6   Section 73

Item 6 of Schedule 2 to this Bill will repeal section 73 of the AMLI Act. Section 73 deals with the operation of certain laws and provides that “Nothing in this Act [i.e. the AMLI Act] or the regulations restricts the operation of the Customs Act 1901, the Commerce (Trade Descriptions) Act 1905 or the Export Control Act 1982, or the operation of any regulations made under any of those Acts.” As Part 2 of the AMLI Act, which covers exports, will be repealed (see item 4 of Schedule 2 to this Bill), section 73 will no longer be necessary.

Commerce (Trade Descriptions) Act 1905

Item 7   Section 10A

Item 7 of Schedule 2 to this Bill will amend section 10A (Application of Part) of the Commerce (Trade Descriptions) Act 1905. Section 10A provides that this part (that is, Part 4 of the Commerce (Trade Descriptions) Act 1905) does not apply in relation to goods that are prescribed goods within the meaning of the Export Control Act 1982. Item 7 will omit the reference to the “Export Control Act 1982” in section 10A of the Commerce (Trade Descriptions) Act 1905 and replace it with a reference to the “Export Control Act 2019”. This will be a consequential amendment to reflect the enactment of the 2019 Bill.

Criminal Code Act 1995

Item 8   Section 473.1 of the Criminal Code (paragraph (j) of the definition of primary production business)

Item 8 of Schedule 2 to this Bill will omit “Export Control Act 1982” from section 473.1 of the Criminal Code definition of primary production business and substitute “Export Control Act 2019”. Section 473.1 of the Criminal Code provides a definition for primary production business and includes in paragraph (j) “a business of operating a registered establishment (within the meaning of the Export Control Act 1982)”. This amendment will be a consequential amendment to reflect the enactment of the 2019 Bill.

Customs Act 1901

Item 9   Section 122R (example)

Item 9 of Schedule 2 to this Bill will amend the note set out after section 122R (Powers in this Division are additional to other powers) of the Customs Act 1901. The note provides an example of some other pieces of legislation that may give authorised officers powers in addition to Division 3A of Part 6 of the Customs Act 1901. This includes Parts III and XII of the Customs Act 1901, the Commerce (Trade Descriptions) Act 1904 and the 1982 Act. Item 9 of Schedule 2 to this Bill will omit the reference to the “Export Control Act 1982” in the example in the note and replace it with a reference to the “Export Control Act 2019”. This will be a consequential amendment to reflect the enactment of the 2019 Bill.

Environment Protection and Biodiversity Conservation Act 1999

Item 10   Paragraph 524(3)(b)

Item 10 of Schedule 2 to this Bill will amend paragraph 524(3)(b) of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to omit the reference to the “Export Control Act 1982” and replace it with a reference to the “Export Control Act 2019”. This will be a consequential amendment to reflect the enactment of the 2019 Bill.
identifies things that are not actions for the purposes of taking action under the EPBC Act. Subsection 524(3) of the EPBC Act currently provides that to avoid doubt, a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation under the 1982 Act will not be an action.

Any governmental authorisations given under the 2019 Bill will need to continue not to be an action for the purposes of section 524 of the EPBC Act after commencement of this Bill. Item 11 of Schedule 2 to this Bill will set out the necessary transitional provisions relating to this amendment.

**Item 11**

Transitional—decision to grant governmental authorisation under the Export Control Act 1982 to take an action is not an action for the Environment Protection and Biodiversity Conservation Act 1999

Item 11 of Schedule 2 to this Bill will provide a transitional provision in relation to the application of the EPBC Act (as amended by item 10 of Schedule 2 to this Bill). The item will provide that a decision by the Commonwealth or a Commonwealth agency to grant a governmental authorisation (however described) under the 1982 Act for another person to take an action is not an action as defined in section 524 of the EPBC Act.

**Horticulture Marketing and Research and Development Services Act 2000**

**Item 12**

Section 3

Item 12 of Schedule 2 to this Bill will remove the reference to “and a 2 year period to phase in the new export control system provided for in Part 4 of this Act” from the last paragraph of the simplified outline in section 3 of the HMRDS Act. This expression is no longer necessary and may be removed.

Item 12 of Schedule 2 will also amend the simplified outline to provide that the 2019 Bill will regulate the export of certain horticultural products. This will be a consequential amendment to reflect the enactment of the 2019 Bill.

**Item 13**

Section 4

Item 13 of Schedule 2 to this Bill will repeal the definitions of “export”, “market”, “regulated horticultural market” and “regulated horticultural product” from section 4 of the HMRDS Act. These definitions are contained within Part 4 of the HMRDS Act. As Part 4 will be repealed as a result of the enactment of this Bill (see item 15 of Schedule 2 to this Bill) these definitions will no longer be required and may also be repealed.

**Item 14**

Section 4 (paragraph (c) of the definition of statutory record)

Item 14 of Schedule 2 to this Bill will repeal paragraph (c) of the definition of “statutory record” set out in section 4 of the HMRDS Act. Paragraph (c) states that statutory record includes “any record that is the property of the industry export control body; and relates to the exercise of powers and functions of the industry export control body under Part 4” (of the HMRDS Act). This will be substituted with a statutory record to include “any record that is the property of the industry export control body.”

The reference to records that relates to the exercise of powers and functions of the industry export control body will no longer be required as those powers and functions, which are set out in Part 4 of the HMRDS Act will be repealed (see item 15 of Schedule 2 to this Bill). The reference to these powers will therefore be redundant and paragraph (c) may be repealed.
Item 15  Part 4
Item 15 of Schedule 2 to this Bill will repeal Part 4 of the HMRDS Act. After the commencement time, the provisions set out in Part 4 will be dealt with under the 2019 Bill. Furthermore, Part 4 of the HMRDS Act or the regulations made under that Part have not been used since 2015 and nothing will need to be transitioned to the new arrangements. Therefore, Part 4 of the HMRDS Act will no longer be required and may be repealed.

Item 16  Subsection 35(1) (note)
Item 16 of Schedule 2 to this Bill will repeal the note to subsection 35(1) of the HMRDS Act. The note specifies that the Secretary may make orders under section 19 of the HMRDS Act. Section 19 is contained within Part 4 which will be repealed as a result of the enactment of this Bill (see item 15 of Schedule 2 to this Bill) and therefore the note referencing section 19 may be repealed.

Inspector-General of Live Animal Exports Act 2019

Item 17  Section 5 (paragraph (a) of the definition of live-stock export official)
Item 17 of Schedule 2 to this Bill will repeal paragraph (a) of the definition of live-stock export official, which refers to an authorised officer within the meaning of Part 2 of the AMLI Act. Following the commencement of this Bill, Part 2 of the AMLI Act (see item 4 of Schedule 2 to this Bill) will be repealed. Therefore, the reference to Part 2 of the AMLI Act will be redundant and paragraph (a) of the definition of live-stock export official may be repealed.

Item 18  Section 5 (paragraphs (b) and (c) of the definition of live-stock export official)
Section 5 of the Inspector–General Act defines live-stock export official by reference, in paragraph (b), to an authorised officer within the meaning of the 1982 Act and in paragraph (c) to an accredited veterinarian within the meaning of the 1982 Act.

Item 18 of Schedule 2 to this Bill will omit “Export Control Act 1982” and substitute “Export Control Act 2019” in the definition of the live-stock export official. These will be consequential amendments to reflect the enactment of the 2019 Bill.

Item 19  Subsection 10(1)
Subsection 10(1) of the Inspector–General Act gives the Inspector-General, the ability to review the performance of functions, or exercise of powers, by live-stock export officials in relation to Part 2 of AMLI Act and the 1982 Act or an instrument made under or for the purposes of those Acts.

Item 19 of Schedule 2 to this Bill will repeal subsection 10(1) and substitute it with the same review powers by making reference to the Export Control Act 2019. This will be a consequential amendment to reflect the enactment of the 2019 Bill while maintaining the ability of the Inspector-General to review the performance of functions, or the exercise of powers, of live-stock export officials.
**Item 20**  
**Saving—reviews in progress before commencement of Export Control Act 2019**

Item 20 of Schedule 2 to this Bill will provide a saving provision for reviews that are in progress or have been completed by the Inspector-General of Live Animal Exports before the commencement of the 2019 Bill.

Subitem 20(1) of Schedule 2 to this Bill will provide that if the Inspector-General of Live Animal Exports has started to conduct a review under subsection 10(1) of the Inspector-General Act before the commencement time of the 2019 Bill and the review had not been completed, then the review may be completed and a report published as if the amendments in item 19 of this Bill had not happened.

Subitem 20(2) of Schedule 2 to this Bill will provide that the Inspector-General of Live Animal Exports will be required to publish a report on a review that was completed under subsection 10(1) of the Inspector-General Act before the commencement time of the 2019 Bill.

This item ensures that the review may be conducted on the basis of the functions and powers that were available to live-stock export officials when the review started.

**Regional Forest Agreements Act 2002**

**Item 21**  
**Section 4 (paragraph (a) of the definition of RFA wood)**

Under section 4 of the *Regional Forest Agreements Act 2002*, Regional Forest Agreement (RFA) wood is defined as: wood processed or unprocessed wood (including wood chips) sourced from a region covered by an RFA, but does not include wood sourced from a plantation in a State unless:

- (a) a code of practice for that State has been approved under regulation 4B of the Export Control (Unprocessed Wood) Regulations; and
- (b) that approval has not been revoked under regulation 4C of those regulations.

To transition to the 2019 Bill, item 21 of Schedule 2 to this Bill will omit the expression “regulation 4B of the Export Control (Unprocessed Wood) Regulations” from paragraph 4(a) of the definition of RFA wood and substitute it with the expression “rules made under section 432 of the Export Control Act 2019”. The Export Control (Unprocessed Wood) Regulations will be repealed on the repeal of the 1982 Act and replaced with the rules made under the 2019 Bill. This will be a consequential amendment to reflect the enactment of the 2019 Bill.

**Item 22**  
**Section 4 (paragraph (b) of the definition of RFA wood)**

Item 22 of Schedule 2 to this Bill will omit the expression “regulation 4C of those regulations” (that is the Export Control (Unprocessed Wood) Regulations) from paragraph 4(b) of the definition of RFA wood (see item 21) and substitute it with a reference to “those rules”. The Export Control (Unprocessed Wood) Regulations will be repealed on the repeal of the 1982 Act and will be replaced with the rules made under the 2019 Bill.

**Item 23**  
**Subsections 6(1) and (2)**

Section 6 of the *Regional Forest Agreements Act 1982* provides that certain Commonwealth Acts do not apply in relation to RFA wood or RFA forestry operations. Subsection 6(1) provides that RFA wood is not prescribed goods for the purposes of the 1982 Act. In addition, there is a note under that subsection that refers to the 1982 Act.
Item 23 of Schedule 2 to this Bill will omit “Export Control Act 1982” (wherever occurring) from subsections 6(1) and (2) of the Regional Forest Agreements Act 2002 and substitute it with references to the “Export Control Act 2019”. The note to section 6 will also be amended to omit the reference to the “Export Control Act 1982” and replace it with the “Export Control Act 2019”. These will be consequential amendments to reflect the enactment of the 2019 Bill.

Wine Australia Act 2013

Item 24 Section 45

Section 45 of the Wine Australia Act 2013 provides that nothing in the Wine Australia Act 2013 or the regulations restricts the operation of the Customs Act 1901, the Commerce (Trade Descriptions) Act 1905 or the Export Control Act 1982, or of any regulations made under any one or more of those Acts.

Item 24 of Schedule 2 to this Bill will omit “Export Control Act 1982, or of any regulations” from section 45 of the Wine Australia Act 2013 and will substitute it with “Export Control Act 2019, or of any regulations or other legislative instruments”. This will be a consequential amendment to reflect the enactment of the 2019 Bill. The amendments will also refer to other legislative instruments made under the Customs Act 1901, the Commerce (Trade Descriptions) Act 1905 or the 2019 Bill in recognition of the fact that rules will be made under the 2019 Bill. As the export of grape products will continue to be dealt with under the Wine Australia Act 2013 and the Wine Australia Regulations 2018, the remaining provisions in the Wine Australia Act 2013 will be retained.
Schedule 3—Application, saving and transitional provisions

Schedule 3 to this Bill will set out application, saving and transitional provisions to ensure that export controls will be managed with continuity and in a way that is not administratively or operationally burdensome for the Commonwealth or business, and that market access to Australia’s exports is maintained.

Part 1—Preliminary

Item 1 Definitions

Subitem 1(1) of Schedule 3 to this Bill will provide definitions for key terms that are used throughout this Bill.

commencement time
This definition will provide that “commencement time” means the time when section 3 of the 2019 Bill commences. This term is central to the transitional provisions as it will provide the time at which matters will cease to be dealt with under an old law and move to be dealt with under the 2019 Bill. There will also be transitional provisions to deal with matters, such as applications that are lodged (but not dealt with) before the commencement time and which will be taken to be applications under the 2019 Bill after the commencement time.

new Export Control Act
This definition will provide that the new Export Control Act means the Export Control Act 2019. This term will be used in many provisions where matters transition from an old law to being dealt with under the new Export Control Act. In this explanatory memorandum, “the 2019 Bill” is used to refer to the Export Control Bill 2019.

old AMLI Order
This definition will provide that an old AMLI Order means an order under section 17 of the AMLI Act as the order was in force immediately before the commencement time. While some of the matters set out in an old AMLI Order will transition by rules made under the 2019 Bill, there is a need to ensure, for example, that requirements in an old AMLI Order that will be covered by the 2019 Bill are transitioned by this Bill.

old AMLI Regulations
This definition will provide that old AMLI Regulations means regulations for the purposes of old Part 2 of the AMLI Act as those regulations were in force immediately before the commencement time. This will cover, for example, the Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998.

old Export Control Act
This definition will provide that the old Export Control Act means the Export Control Act 1982 as in force immediately before the commencement time. This term is necessary to refer to matters that were dealt with under the 1982 Act in order to transition those matters to be covered by the 2019 Bill. In this explanatory memorandum, “the 1982 Act” is used to refer to the Export Control Act 1982.

old Export Control law
This definition will provide that an old Export Control Law means any of the following laws:

(a) the old Export Control Act;
(b) old Export Control Regulations;
(c) an old Export Control Order;
(d) old Part 2 of the AMLI Act;
(e) old AMLI Regulations;
(f) an old AMLI Order.

This definition will provide a short-hand way of referring to the laws that are transitioning to the 2019 Bill. It is necessary to prevent having to refer to every law each time the provision of this Bill relates to all the old laws.

**old Export Control Order**

This definition will provide that an old Export Control Order means an order made by the Minister under regulation 3 of the *Export Control (Orders) Regulations 1982*, as the order was in force immediately before the commencement time. This term is necessary to deal with matters that are set out in the orders so these matters can transition to be covered by the 2019 Bill.

**old Export Control Regulations**

This definition will provide that the old Export Control Regulations means regulations made under the old Export Control Act, as those regulations were in force immediately before the commencement time. This term is necessary to deal with matters that are set out in the regulations in order to transition those matters to be covered by the 2019 Bill.

**old Part 2 of the AMLI Act**

This definition will provide that old Part 2 of the AMLI Act means Part 2 of the *Australian Meat and Live-stock Industry Act 1997*, as in force immediately before the commencement time. This term is necessary to deal with matters that are set out in old Part 2 of the AMLI Act in order to transition those matters to be covered by the 2019 Bill.

**Regulatory Powers Act**

This definition will provide that the Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*. This term is used in relation to monitoring and investigating contraventions of this Bill, and the 1982 Act and Part 2 of the AMLI Act as in force immediately before the commencement time.

**wood export licence**

The definition will provide that a wood export licence means a licence to export prescribed goods that are hardwood wood chips or other kinds of unprocessed wood. This term is necessary as it will be used to transition matters related to the export of hardwood wood chips and other unprocessed wood. A note will be included following the definition that will refer the reader to the *Export Control (Hardwood Wood Chips) Regulations 1996* and the Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79, as amended) under which wood export licences could be granted under before the commencement time.

Subitem 1(2) of Schedule 3 to this Bill will provide that an expression used in both a provision in Schedule 3 to this Bill and in the 2019 Bill will generally have the same meaning as in the 2019 Bill. For example, a reference to a registered establishment in Schedule 3 to this Bill will have the same meaning as a registered establishment in the 2019 Bill. Provisions like subitem 1(2) are necessary to prevent the need to define terms that are used in both the 2019 Bill as well as this Bill.
This general principle is, however, subject to two exceptions (as set out in subitems 1(3) and (4) of Schedule 3 to this Bill) where expressions in the 1982 Act, the old Export Control Regulations or an old Export Control Order (the old export control laws) or in old Part 2 of the AMLI Act, the old AMLI Regulations or an old AMLI Order (the old AMLI laws) will continue to apply.

Subitem 1(3) of Schedule 3 to this Bill is the first exception and will provide that an expression used in a provision of Schedule 3 to this Bill and in the old export control laws, has the same meaning as in the old export control laws. However, this is only to the extent that:

- the expression relates to something that existed under the old export control laws before commencement time;
- the provision in Schedule 3 has the effect that a provision of the old export control laws will continue (despite the repeal of the old export control laws).

Examples of provisions where expressions continue to have effect are items 15, 22 and 31 of Schedule 3 to this Bill. Subitem 1(3) is designed to ensure that expressions do not need to be defined in this Bill if the old export control law expressions could continue to apply.

Subitem 1(4) of Schedule 3 to this Bill is the second exception and will apply where expressions in the old AMLI laws will continue to apply. Subitem 1(4) will provide that an expression used in a provision of Schedule 3 to this Bill and in the old AMLI laws has the same meaning as in the old AMLI laws. However, this is only to the extent that:

- the expression relates to something that existed under the old AMLI laws before commencement time;
- the provision in Schedule 3 has the effect that a provision of the old AMLI laws will continue (despite the repeal of the old AMLI laws).

An example of an old AMLI laws provision that will continue is item 89 which relates to reports to Parliament about live-stock under subsection 57AA(3) of old Part 2 of the AMLI Act.

Subitem 1(4) is designed to ensure that expressions do not need to be defined in this Bill if the expressions in the old AMLI laws could continue to apply.

**Item 2 Section 7 of the Acts Interpretation Act 1901**

Item 2 of Schedule 3 to this Bill will provide that section 7 of the Acts Interpretation Act will apply to the repeal of the 1982 Act and Part 2 of the AMLI Act ensuring that the repeal of that Act and Part 2 of the AMLI Act will not affect any right, privilege, obligation, penalty, and liability accrued or incurred under the 1982 Act or Part 2 of the AMLI Act.

**Item 3 References to an old Export Control Law in continuing instruments etc.**

Subitem 3(1) of Schedule 3 to this Bill will assist with the transition from the existing legislation to the 2019 by using an interpretive approach to references to existing legislation. The item will apply to an instrument, a certificate or another document that was made or given under an old Export Control Law if the instrument, certificate or other document will continue in force, after the commencement time. An example will be inserted after subitem 3(1). The example will set out, but does not limit, what types of instruments will be covered by this provision. This includes an instrument of exemption, a government
certificate, a notice of accreditation of a property, a certificate of registration of an establishment, an approved arrangement, an export licence, an export permit, a notice of intention to export goods, an instrument of authorisation and an instrument of approval.

Subitem 3(2) of Schedule 3 to this Bill will provide that in relation to the applicable instruments referred to in subitem 3(1), if the instrument includes a reference to an old Export Control Law or a provisions of an old Export Control Law and there is a corresponding new provision in the 2019 Bill or rules made under that Bill that has a substantially similar effect, then the old reference will be taken to be a reference to the new provision. This will mean that these instruments will not need to be amended in order to continue to have effect after the commencement time. This provision will be necessary to facilitate transitioning to the 2019 Bill. In addition to this interpretive provision, the Secretary will have the power to vary instruments (see, for example, see item 16 of Schedule 3 to this Bill).

Part 2—Exporting goods

Division 1—Exemptions

Item 4 Exemptions from old Export Control Order or old AMLI Order in force immediately before commencement time

Subitem 4(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 4. Item 4 will apply in relation to the export of a kind of prescribed goods to which an old Export Control Order or an old AMLI Order applied if:

(a) there is an instrument of exemption in force under either an old Export Control Order or an old AMLI Order immediately before the commencement time; and
(b) the 2019 Bill or rules made under that Bill include provisions that are substantially similar to the provisions of the old Export Control Order or the old AMLI Order from which the goods were exempt.

Subitem 4(2) of Schedule 3 to this Bill will provide that an instrument of exemption will continue in force after the commencement time as if it had been granted under paragraph 54(1)(a) of the 2019 Bill. In addition, subitem 4(2) will provide that the instrument of exemption will become an instrument of exemption for the purposes of subclause 56(1) of the 2019 Bill.

Subitem 4(3) of Schedule 3 to this Bill will provide that if the exemption was subject to conditions, the exemption will continue to be subject to the same conditions after the commencement time.

Subitems 4(4) and (5) of Schedule 3 to this Bill will provide a period of effect for the exemption. If the instrument of exemption did not provide for the exemption to cease to be in force on a day or for a period, the exemption will remain in force after the commencement time unless it is revoked under section 59 of the 2019 Bill. However, if the instrument of exemption provided for the exemption to cease to be in force on a specified day or at the end of a specified period, the exemption remains in force until the specified day or the end of the specified period after the commencement time, unless it is revoked under section 59 of the 2019 Bill.

Subitem 4(6) of Schedule 3 to this Bill will provide that clause 57 of the 2019 Bill (which will deal with the period of effect of an exemption granted under the 2019 Bill) will not apply in relation to the exemption. This will mean that the exemption will continue in effect as set out in this Bill rather than as set out in the 2019 Bill.
Subitem 4(7) of Schedule 3 to this Bill will provide that the Secretary may vary the instrument of exemption to replace a reference to an old Export Control law, or a provision of an old Export Control law, with a reference to the 2019 Bill or rules made under that Bill or the provisions of the 2019 Bill or a provision of the rules made under that Bill (as the case requires). This provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill and will support the transition to the 2019 Bill.

Item 5 Application for exemption from old Export Control Order or old AMLI Order made but not decided, or decision not notified, before commencement time

Subitem 5(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 5. Item 5 will apply if:

(a) an application had been made under an old Export Control Order or an old AMLI Order for an exemption; and

(b) the 2019 Bill or rules made under that Bill include provisions that are substantially similar to the provisions of the old Export Control Order or the old AMLI Order from which the exemption is sought; and

(c) either:

(i) no decision on the application had been made before the commencement time; or

(ii) a decision on the application had been made before the commencement time but notice of the decision had not been given to the applicant before that time.

Decision not made before commencement time

Subitem 5(2) of Schedule 3 to this Bill will provide that if no decision had been made before the commencement time, the application will be taken to be an application made under clause 53 of the 2019 Bill for an exemption from the corresponding provisions of the 2019 Bill. This will mean a person will not have to submit a new application, and will support the transition to the 2019 Bill. In addition, subclauses 53(3) to (5) of the 2019 Bill (which will deal with the form of applications for exemptions under the 2019 Bill) will not apply. This is because, although the application is taken to be an application under the 2019 Bill and for all intents and purposes, it is such an application, it was submitted before the requirements for such applications became law. The effect of subitem 5(2) is to prevent the retrospective effect of application requirements in the 2019 Bill.

Decisions made before commencement time but notice not given before that time

Subitems 5(3) to (5) of Schedule 3 to this Bill will deal with the circumstance where a decision had been made on an application for an exemption before the commencement time, but the notice that is required to be given had not been given before that time. Subitem 5(3) will provide that the Secretary must, as soon as practicable give the applicant written notice of the decision.

Subitem 5(4) of Schedule 3 to this Bill will deal with the circumstance where the Secretary has decided to grant the exemption. Notwithstanding the fact that the decision was made before the commencement time, the decision will be taken to be a decision under paragraph 54(1)(a) of the 2019 Bill. As a consequence, the Secretary must give the applicant an instrument of exemption stating the information set out in subclause 56(1) of the 2019 Bill.
Subitem 5(5) of Schedule 3 to this Bill will deal with the circumstance where the Secretary had decided not to grant the exemption. In such situations, the notice of the decision (referred to in subitem 5(3)) must include the reasons for the decision and information about the applicant’s right to have the decision reviewed. A note will be included following subitem 5(5) to refer the reader to item 78 of Schedule 3 to this Bill, which will deal with review of decisions made under an old Export Control Order. The effect of item 78 is to save the review rights that existed at the time the decision was made.

**Division 2—Government certificates**

**Item 6 Government certificates in force immediately before commencement time**

Subitem 6(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 6. Item 6 will apply in relation to a government certificate that was issued under an old Export Control Order and which was in force immediately before the commencement time.

Subitem 6(2) of Schedule 3 to this Bill will provide that the government certificate will continue in force after the commencement time as if it had been issued under paragraph 67(1)(a) of the 2019 Bill (which will deal with an issuing body issuing government certificates under the 2019 Bill). Paragraph 6(2)(b) will provide that the government certificate will also continue to be subject to any conditions stated on the certificate so that the certificate transitions with all its attributes into a certificate under the 2019 Bill.

Subitem 6(3) of Schedule 3 to this Bill will provide that the person that issued the government certificate (before the commencement time) is taken to be the issuing body for the purposes of Part 3 of Chapter 2 of the 2019 Bill. This provision is necessary to ensure a smooth transition to the provisions dealing with issuing bodies in that Part. For example, an issuing body may receive additional or corrected information (clause 74 of the 2019 Bill), revoke a government certificate (clause 75 of the 2019 Bill) and receive returned certificates (clause 76 of the 2019 Bill).

Subitem 6(4) of Schedule 3 to this Bill will provide that subclause 72(1) of the 2019 Bill (which will deal with when a government certificate takes effect) will not apply in relation to the continuing government certificate. The remainder of clause 72 of the 2019 Bill will set out when the government certificate remains in force.

Subitem 6(5) of Schedule 3 to this Bill will provide that the Secretary may vary the government certificate to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill or a provision of the 2019 Bill or rules made under that Bill (as the case requires). This provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill, and will support the transition to the 2019 Bill.
Item 7 Government certificates issued before commencement time to take effect after that time

Subitem 7(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 7. Item 7 will apply in relation to a government certificate that was issued under an old Export Control Order but which states that it takes effect on a specified date that is the commencement time or a later date.

Subitem 7(2) will provide that the government certificate will continue to have effect after the commencement time as if it had been issued under paragraph 67(1)(a) of the 2019 Bill. A note will be inserted after subitem 7(2) which will advise that the government certificate will take effect on the date stated in the certificate and will refer the reader to paragraph 72(1)(b) of the 2019 Bill.

Subitem 7(3) of Schedule 3 to this Bill will provide that the person that issued the government certificate (before the commencement time) is taken to be the issuing body for the purposes of Part 3 of Chapter 2 of the 2019 Bill. This provision is necessary to ensure a smooth transition to the provisions dealing with issuing bodies in that Part. For example, an issuing body may receive additional or corrected information (clause 74 of the 2019 Bill), revoke a government certificate (clause 75 of the 2019 Bill) and receive returned certificates (clause 76 of the 2019 Bill).

Subitem 7(4) of Schedule 3 to this Bill will provide that the Secretary may vary the government certificate to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that 2019 Bill or a provision of the 2019 Bill or a provision of the rules made under that Bill (as the case requires). This provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill, and will support the transition to the 2019 Bill.

Item 8 Application for government certificate not decided before commencement time

Subitem 8(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 8. Item 8 will apply if an application had been made under an old Export Control Order for a government certificate and no decision on the application had been made before the commencement time.

Subitem 8(2) of Schedule 3 to this Bill will provide that the application is taken, after the commencement time to be an application made under subclause 65(1) of the 2019 Bill. This will mean a person will not have to submit a new application.

Subitem 8(3) of Schedule 3 to this Bill will provide that subclauses 65(2) to (4) of the 2019 Bill (which will deal with the form of applications for government certificates under the 2019 Bill) will not apply. This is because, although the application is taken to be an application under the 2019 Bill and for all intents and purposes, it is such an application, it was submitted before the requirements for such applications became law. The effect of subitem 8(2) is to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 8(4) of Schedule 3 to this Bill will provide that the person to whom the application was made before the commencement time is taken to be the issuing body for a government certificate for the purposes of Part 3 of Chapter 2 the 2019 Bill. This provision will be necessary to ensure a smooth transition to the provisions in the 2019 Bill that will relate to issuing bodies. For example, an issuing body may receive additional or corrected information
(clause 74 of the 2019 Bill), revoke a government certificate (clause 75 of the 2019 Bill) and receive returned certificates (clause 76 of the 2019 Bill).

**Part 3—Accredited properties**

**Item 9 Accreditations in force immediately before commencement time**

Subitem 9(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 9. Item 9 will apply to a property that was accredited under an old Export Control Order if the accreditation of the property was in force immediately before the commencement time. Subitem 9(2) will provide that the accreditation will be taken to be in force even if the accreditation of the property was suspended at the commencement time.

**Accreditation continues in force**

Subitem 9(3) of Schedule 3 to this Bill will provide that the accreditation of the property will continue in force after the commencement time as if the property had been accredited under Chapter 3 of the 2019 Bill. Paragraph 9(3)(b) will also provide that the accreditation will continue in force after the commencement time subject to any conditions stated in the notice of the decision to accredit the property, or a later decision to renew the accreditation of the property, that was given to the manager of the property by the Secretary before the commencement time.

Two notes will be inserted after subitem 9(3). Note 1 will advise that the accreditation will also be subject to the conditions provided by the 2019 Bill and the conditions prescribed by rules made for the purposes of paragraph 80(1)(b) of that Bill and will refer the reader to subclause 80(1) of that Bill (which will deal with conditions of an accreditation). Note 2 will advise that the accreditation of the property may be varied under item 16 of this Schedule (which will deal with variations of references to an old Export Control Law). Accreditation may also be varied, suspended or revoked under Chapter 3 of the 2019 Bill.

**Expiry of accreditation**

Subitem 9(4) of Schedule 3 to this Bill will deal with the period of effect of an accreditation. The item will provide that if there was no expiry date for the accreditation of the property under the old Export Control Order, the accreditation of the property will continue in force after the commencement time unless revoked under Part 6 of Chapter 3 of the 2019 Bill or under rules made for the purposes of subclause 109(3) of that Bill. In addition, subitem 9(5) of Schedule 3 to this Bill will provide that if there was an expiry date for the accreditation of the property under the old Export Control Order, the accreditation of the property will continue in force until that expiry date unless:

(a) it is renewed under Part 3 of Chapter 3 of the 2019 Bill on or before that date; or

(b) it is revoked under Part 6 of Chapter 3 of that Bill or under rules made for the purposes of subclause 109(3) of that Bill on or before that date.
Item 10  
Variation of accreditation by Secretary before commencement time

Show cause notice given before commencement time

Subitem 10(1) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the manager of an accredited property under an old Export Control Order to show cause, within a specified period, why a specified variation in relation to the accreditation of the property should not be made; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it had been given to the manager of the property under subclause 90(3) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 10(1) to advise the reader that the 14 day period for the manager of the property to respond to the show cause notice starts on the day the notice was given and will refer the reader to paragraph 90(4)(c) of the 2019 Bill (which deals with the period for responding to a show cause notice).

Variation made but manager not notified before commencement time

Subitem 10(2) of Schedule 3 to this Bill will apply if:

(a) the Secretary had made a variation in relation to the accreditation of a property under an old Export Control Order; and

(b) the Secretary had not given the manager of the property written notice of the variation before the commencement time.

In these circumstances, the Secretary must give the manager written notice of the variation. The notice must state the information referred to in subclause 91(2) of the 2019 Bill. This will include such matters as any varied or new conditions, the date the variation takes effect and any other information prescribed by the rules made under clause 432 of the 2019 Bill.

Variation made before commencement time to take effect after commencement time

Subitem 10(3) of Schedule 3 of this Bill will apply if:

(a) the Secretary made a variation in relation to the accreditation of a property under an old Export Control Order; and

(b) the variation had not taken effect before the commencement time.

In these circumstances, the variation will take effect after the commencement time as if it had been made under clause 90 of the 2019 Bill (clause 90 of the 2019 Bill will deal with the Secretary making variations in relation to an accreditation). The variation will take effect on the date specified in the notice given to the manager of the property under subclause 91(1) of the 2019 Bill (subclause 91(1) of the 2019 Bill provides that the Secretary must give the manager of the property written notice of the variation).
**Item 11 Suspension of accreditation**

*Show cause notice given before commencement time*

Subitem 11(1) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the manager of an accredited property under an old Export Control Order to show cause, within a specified period, why the accreditation of the property should not be suspended; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it had been given to the manager of the property under subclause 94(2) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 11(1) to advise the reader that the 14 day period for the manager of the property to respond to the show cause notice starts on the day the notice was given to the manager and will refer the reader to paragraph 94(3)(c) of the 2019 Bill. Clause 94 of the 2019 Bill will set out the general grounds for suspension of the accreditation of a property.

*Notice of payment due given before commencement time*

Subitem 11(2) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to a person (the debtor) under an old Export Control Order because the amount of a relevant Commonwealth liability (within the meaning of the old Export Control Order) of the manager of an accredited property, or relating to the property, had not been paid by the due date for payment; and

(b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time.

In these circumstances, the notice of payment due will continue to have effect after the commencement time as if it had been given to the debtor under paragraph 95(1)(b) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 8 days for paying the amount or entering into an arrangement to pay the amount. (Clause 95 of the 2019 Bill will set out having an overdue relevant Commonwealth liability as a ground for suspension of the accreditation of a property). A note will be inserted after subitem 11(2) to advise the reader that if, within 8 days after notice was given to the debtor, the amount of the relevant Commonwealth liability is not paid or the debtor does not enter into an arrangement with the Secretary to pay the amount, the Secretary will be able to suspend the accreditation of the property in relation to all kinds of export operations and all kinds of prescribed goods. The note will also refer the reader to subclause 95(1) of the 2019 Bill.

*Accreditation suspended immediately before commencement time*

Subitem 11(3) of Schedule 3 of this Bill will apply if:

(a) the accreditation of a property had been suspended under an old Export Control Order; and

(b) the suspension was in force immediately before the commencement time.
In these circumstances, the accreditation of the property will be taken to be suspended after the commencement time under Part 5 of Chapter 3 of the 2019 Bill. This will continue the suspension after the commencement time in relation to a suspension that was in place before the commencement time.

Request to revoke suspension

Subitem 11(4) of Schedule 3 of this Bill will apply if:

(a) the accreditation of a property was suspended immediately before the commencement time; and

(b) the manager of the property had, under an old Export Control Order, requested the Secretary, in writing, to revoke the suspension; and

(c) either:
   (i) no decision in response to the request had been made before the commencement time; or
   (ii) a decision in response to the request had been made before the commencement time but notice of the decision had not been given to the manager of the property before that time.

In these circumstances, the Secretary must comply with subclause 93(3) of the 2019 Bill in relation to the request as if it had been made under subclause 93(1) of that Bill. Subclause 93(3) of the 2019 Bill will provide what the Secretary may do if the Secretary receives a request to revoke the suspension under the Bill.

Notice of suspension given before commencement time

Subitem 11(5) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the manager of an accredited property notice in writing of the suspension of the accreditation of the property; and

(b) the suspension had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to suspend the accreditation under subclause 94(1) of the 2019 Bill and the suspension takes effect after the commencement time in accordance with the notice.

Two notes will be inserted after subitem 11(5). Note 1 will advise the reader that the decision to suspend the accreditation will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill. Note 2 will advise that the Secretary may revoke the suspension as set out in clause 98 of the 2019 Bill.

Item 12 Revocation of accreditation

Notice given before commencement time by Secretary

Subitem 12(1) of Schedule 3 to this Bill will apply if:

(a) a notice (a show cause notice) had been given to the manager of a property under an old Export Control Order to show cause, within a specified period, why the accreditation of the property should not be cancelled or revoked; and

(b) the period had not ended before the commencement time.
In these circumstances, the show cause notice will continue to have effect after the commencement time as if it had been given to the manager of the property under subclause 102(2) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 12(1) to advise the reader that the 14 day period for the manager of the property to respond to the show cause notice will start on the day the notice was given and will refer the reader to paragraph 102(3)(b) of the 2019 Bill (which deals with the period for responding to a show cause notice).

Subitem 12(2) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the manager of an accredited property notice in writing of the cancellation or revocation of the accreditation of the property; and

(b) the cancellation or revocation had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to revoke the accreditation under subclause 102(1) of the 2019 Bill and the revocation takes effect after the commencement time in accordance with the notice. A note will be inserted after subitem 12(2) to advise the reader that the decision to revoke the accreditation will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

*Notice given before commencement time by manager of accredited property withdrawing property from accreditation*

Subitem 12(3) of Schedule 3 to this Bill will apply if:

(a) the manager of an accredited property had, under an old Export Control Order, given written notice to the Secretary withdrawing the property from accreditation; and

(b) the notice is received by the Secretary after the commencement time.

In these circumstances, the Secretary must, under subclause 101(3) of the 2019 Bill, revoke the accreditation of the property with effect on the later of the day the Secretary receives the notice or the date specified in the notice. This will have the effect of withdrawing the accreditation as requested by the manager.

*Request made before commencement time by manager of accredited property to revoke accreditation*

Subitem 12(4) of Schedule 3 to the Bill will provide that if the manager of an accredited property had, under an old Export Control Order, requested the Secretary, in writing, to revoke the accreditation of the property, the Secretary must, under subclause 101(3) of the 2019 Bill, revoke the accreditation with effect:

(a) on the day specified in the request; or

(b) if the Secretary had given the manager a notice requesting the manager to show cause why the accreditation should not be revoked and the Secretary had not decided whether to revoke the accreditation or not—on a later day that the Secretary considers appropriate.

This will have the effect of revoking the accreditation as requested by the manager.
Item 13 Application for accreditation etc. made but not decided before commencement time

Subitem 13(1) of Schedule 3 to this Bill will provide an application provision for item 13. Item 13 will apply if:

(a) an application had been made to the Secretary under an old Export Control Order:
   (i) to accredit a property; or
   (ii) to renew the accreditation of a property; or
   (iii) to make or approve a variation in relation to the accreditation of a property or vary the conditions of the accreditation of a property; and
(b) no decision on the application had been made, or had been taken to have been made, before the commencement time.

Subitem 13(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 13(1), after the commencement time:

(a) an application referred to in subparagraph (1)(a)(i) will be taken to be an application made under clause 78 of the 2019 Bill (which will deal with applications to accredit a property); and
(b) an application referred to in subparagraph (1)(a)(ii) will be taken to be an application made under clause 83 of the 2019 Bill (which will deal with applications to renew the accreditation); and
(c) an application referred to in subparagraph (1)(a)(iii) will be taken to be an application made under subclause 87(1) of the 2019 Bill (which will deal with applications to vary an accreditation).

A note will be inserted after subitem 13(2) to advise the reader that clause 378 of the 2019 Bill (which will require additional or corrected information in relation to an application to be given in certain circumstances) will apply in relation to the applications set out in subitem 13(1).

Subitem 13(3) of Schedule 3 to the Bill will provide that clause 377, paragraph 379(1)(a) and subclause 379(4), which will set out the requirements for certain applications under the 2019 Bill, will not apply to applications set out in subitem 13(1). This will be because, although the applications are taken to be an application under the 2019 Bill and for all intents and purposes it will be such an application, it was submitted before the requirements for such applications became law. The effect of subitem 13(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 13(4) of Schedule 3 to this Bill will deal with consideration periods. Subitem 13(4) will provide that if under the old Export Control Order there was an old consideration period then in working out the consideration period for the application for the purposes of clause 379 of the 2019 Bill:

(a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill; and
(b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.
Subitem 13(5) of Schedule 3 to this Bill will provide that if subitem 13(4) does not apply in relation to the application, the consideration period for the application for the purposes of clause 379 of the 2019 Bill will start on the day the commencement time occurs. A note will be inserted after subitem 13(5) to advise the reader that the initial consideration period for an application to which subitem 13(5) applies is the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill.

Subitems 13(4) and (5) of Schedule 3 to this Bill will have the effect of including the consideration period (if any) that was set out in an old Export Control Order in relation to calculating the consideration period in relation to the application. This will result in no detriment to the applicant where an application has been made but has not been dealt with by the Department before the commencement time. If there was no consideration period in an old Export Control Order, subitem 13(5) will mean that a consideration period will start at the same time as the commencement of the 2019 Bill.

As the application referred to in subitem 13(1) will be taken to be an application under the 2019 Bill, the initial consideration period will be able to be extended under subclauses 379(5), 379(6), 379(7) or 379(8) of the 2019 Bill.

**Item 14 Application for accreditation etc. made and decided but applicant not notified before commencement time**

Subitem 14(1) of Schedule 3 to this Bill will provide an application provision for item 14. Item 14 will apply if:

(a) an application had been made to the Secretary under an old Export Control Order:
   (i) to accredit a property; or
   (ii) to renew the accreditation of a property; or
   (iii) to make or approve a variation in relation to the accreditation of a property or vary the conditions of the accreditation of a property; and

(b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.

Subitem 14(2) of Schedule 3 to this Bill will provide that in the circumstances described by subitem 14(1) the Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision. In addition, subitem 14(3) of Schedule 3 to this Bill will provide that if the decision was to accredit a property, the property will be taken to be accredited under Chapter 3 of the 2019 Bill.

Subitem 14(4) of Schedule 3 to this Bill will provide that if the decision was to accredit a property, or renew the accreditation of a property, the notice under subitem 14(2) must state the information referred to in clause 81 of the 2019 Bill. Similarly, subitem 14(5) will provide that if the decision was to make or approve a variation to an accreditation of a property or vary conditions, the notice under subitem 14(2) must state the information referred to in subclause 88(2) of the 2019 Bill.

Subitem 14(6) of Schedule 3 to this Bill will provide that if the Secretary had decided, or had been taken to have decided, to refuse the application then the notice under subitem 14(2) must state the reasons for the decision and information about the applicant’s right to have the decision reviewed. A note will be inserted after subitem 14(6) to refer the reader to item 78 of Schedule 3 to this Bill, which will deal with review of decisions made under old Export...
Control Order. The effect of item 78 is to save the review rights that existed at the time the decision was made.

**Item 15 Notice or direction to take action given before commencement time**

Subitem 15(1) of Schedule 3 to this Bill will provide an application provision for item 15. Item 15 will apply if:

(a) a person who was, or who had been, the manager of an accredited property before the commencement time had been given:

(i) notice of the cancellation or revocation of the accreditation of the property under an old Export Control Order; and

(ii) a notice or direction under the old Export Control Order requiring the person to take specified action in relation to the operations and prescribed goods covered by the accreditation; and

(b) the old notice or direction had not been complied with before the commencement time.

Subitem 15(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 15(1), the person must comply with the notice or direction. The effect of item 15 will be to preserve the effect of notices or directions given before commencement and ensure that requirements in these notices or directions must still be complied with after the commencement time.

Subitem 15(3) of Schedule 3 to this Bill will provide that a person will commit a fault-based offence if the person is given a notice or direction under an old Export Control Order and the person fails to comply with the old notice or direction, as outlined in subitem 15(1) and 15(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subitem 15(4) of Schedule 3 to this Bill will provide that a person will be liable to a civil penalty if the person is given a notice or direction under an old Export Control Order and the person fails to comply with the old notice or direction, as outlined in subitem 15(1) and 15(2). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subitem 15(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subitem 15(2) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subitem 15(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by an accredited property. Conduct that contravenes the requirements set out in this provision may undermine the integrity of the regulatory framework provided for by the 2019 Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on
market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Item 16  Variation of documents etc. relating to accreditation to replace references to old laws**

Subitem 16(1) of Schedule 3 to this Bill will provide an application provision for item 16. Item 16 will apply in relation to an accredited property for which the accreditation will continue in force after the commencement time under subitem 9(3) of Schedule 3 to this Bill.

Subitem 16(2) of Schedule 3 to this Bill will provide that the Secretary may vary a document or record retained by the Secretary in relation to the accreditation of this property to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or a provision of rules made under that Bill or a provision of the 2019 Bill or rules made under that Bill. This will complement item 3 of Schedule 3 to this Bill which will provide an interpretive provision in relation to references to an old Export Control Law in instruments etc. (such as an instrument of exemption or a certificate).

Subitem 16(3) of Schedule 3 of this Bill will provide that in addition to the Secretary being able to vary the accreditation, the Secretary may direct the manager of the property to vary any notice or other document or record retained by the manager relating to the accreditation of the property by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill or a provision of the 2019 Bill or rules made under that Bill. The direction must be in writing. To give effect to this provision, subitem 16(4) of Schedule 3 to this Bill will provide that if the manager of the property is given a direction under subitem 16(3), the holder must comply with the direction:

(a) within 2 years after receiving it; or

(b) within any longer period granted by the Secretary on application, in writing, by the manager.

In addition, subitem 16(5) of Schedule 3 to this Bill will provide that subparagraphs 94(1)(d)(i) and 102(1)(d)(i) of the 2019 Bill will apply in relation to the accreditation of the property as if the reference to a direction in those subparagraphs included a reference to a direction given to the manager of the accredited property under subitem 16(3). A note will be inserted after subitem 16(5) to advise the reader of the effect of this provision in that the accreditation of the property may be suspended or revoked if the manager of the property fails to comply with the direction (see subparagraphs 94(1)(d)(i) and 102(1)(d)(i) of the 2019 Bill).

**Part 4—Registered establishments**

**Item 17  Registrations in force immediately before commencement time**

Subitem 17(1) of Schedule 3 to this Bill will provide an application provision for item 17. Item 17 will apply to an establishment that was registered under an old Export Control Order if the registration of the establishment was in force immediately before the commencement time. A note will be inserted after subitem 17(1) to identify that for the purposes of the old Export Control laws an establishment incudes premises, as defined in section 3 of the
1982 Act. Subitem 17(2) will provide that the registration will be taken to be in force even if the registration of the establishment was suspended, in full or in part, at the commencement time.

Registration continues in force

Subitem 17(3) will provide that the registration of the establishment will continue in force after the commencement time. This will mean that the registration of an establishment will continue after the commencement time as if the property had been registered under Chapter 4 of the 2019 Bill. Subitem 17(3) will also provide that the registration of the establishment will be subject to any conditions stated in the certificate of registration, or any later notice given to the occupier of the establishment by the Secretary before the commencement time.

Two notes will be inserted after subitem 17(3). Note 1 will advise the reader that the registration will also be subject to the conditions provided by the 2019 Bill and the conditions prescribed by rules made for the purposes of paragraph 113(1)(b) of that Bill and will refer the reader to subclause 113(1) of that Bill. Note 2 will advise that the registration of the establishment may be varied under item 23 of Schedule 3 to this Bill (which will deal with variations in relation to references to an old Export Control Law). The note will also advise that the registration may be varied, suspended or revoked under Chapter 4 of the 2019 Bill.

Expiry of registration

Subitem 17(4) of Schedule 3 to this Bill will deal with the period of effect of a registration. The item will provide that if there was no expiry date for the registration of the establishment under the old Export Control Order, the registration of the establishment will continue in force after the commencement time unless revoked under Part 6 of Chapter 4 of the 2019 Bill or will be taken to have been revoked under clause 147 of that Bill. Clause 147 will deal with persons ceasing to be the occupier of a registered establishment. In addition, subitem 17(5) of Schedule 3 to this Bill will provide that if there was an expiry date for the registration of the establishment under the old Export Control Order, the registration of the establishment will continue in force until that expiry date unless:

(a) it is renewed under Part 3 of Chapter 4 of the 2019 Bill on or before that date; or

(b) it is revoked under Part 6 of Chapter 4 of that Bill or under rules made for the purposes of clause 147 of that Bill on or before that date.

Item 18 Suspension of registration

Show cause notice given before commencement time

Subitem 18(1) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the occupier of a registered establishment under an old Export Control Order to show cause, within a specified period, why the registration of the establishment should not be suspended; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it were a notice that had been given to the occupier of the establishment under subclause 127(2) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 18(1) to advise the reader that the 14 day period for the occupier of the establishment to respond to the show cause notice starts on the day the notice
was given and will refer the reader to paragraph 127(3)(c) of the 2019 Bill. Clause 127 of the 2019 Bill will set out the general grounds for suspension of the registration of a property.

Notice of payment due given before commencement time

Subitem 18(2) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the occupier of a registered establishment under an old Export Control Order because the amount of a relevant Commonwealth liability of the occupier of a registered establishment, or relating to the establishment, had not been paid by the due date for payment; and

(b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time.

In these circumstances, the notice of payment due will continue to have effect after the commencement time as if it were a notice that had been given to the debtor under paragraph 128(1)(b) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 8 days for paying the amount or entering into an arrangement to pay the amount. Clause 128 of the 2019 Bill will provide that an overdue relevant Commonwealth liability is a ground for suspension of the registration of an establishment.

A note will be inserted after subitem 18(2) which will advise the reader that if, within 8 days after the notice was given to the occupier, the amount of the relevant Commonwealth liability is not paid or the occupier has not entered into an arrangement with the Secretary to pay the amount, the Secretary may suspend the registration of the establishment in relation to all kinds of export operations and all kinds of prescribed goods (see subclause 128(1) of the 2019 Bill).

Registration suspended immediately before commencement time

Subitem 18(3) of Schedule 3 to this Bill will apply if:

(a) the registration of an establishment had been suspended, in full or in part, under an old Export Control Order; and

(b) the suspension was in force immediately before the commencement time.

In these circumstances, the registration of the establishment will be taken to be suspended, in full or in part, after the commencement time under Part 5 of Chapter 4 of the 2019 Bill. This will continue a suspension after the commencement time in relation to a suspension that was in place before the commencement time.

Notice of suspension given before commencement time

Subitem 18(4) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the suspension, in full or in part, of the registration of the establishment; and

(b) the suspension had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to suspend the registration, in full or in part in accordance with the notice, under subclause 127(1) of the 2019 Bill and the registration will be suspended after the commencement time in full or in part in accordance with the notice. This will mean that where it was intended to suspend the
registration before the commencement time, the suspension will take effect after the commencement time in accordance with the notice.

Two notes will be inserted after subitem 18(4). Note 1 will advise the reader that the decision to suspend the registration will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill. Note 2 will advise the reader that the Secretary may revoke the suspension and will refer the reader to clause 131 of the 2019 Bill (which deals with the revocation of suspension).

**Item 19** Revocation of registration

*Notice given before commencement time by Secretary*

Subitem 19(1) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the occupier of a registered establishment under an old Export Control Order to show cause, within a specified period, why the registration of the establishment should not be cancelled or revoked, in full or in part; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it were a notice that had been given to the occupier of the establishment under subclause 127(2) of the 2019 Bill (which will apply to cancellation or revocation in part) or subclause 138(2) of the 2019 Bill (which will apply to cancellation or revocation in full). This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 19(1) to advise the reader that the 14 day period for the occupier of the establishment to respond to the show cause notice starts on the day the notice was given to the occupier and will refer the reader to paragraph 127(3)(c) and 138(3)(b) of the 2019 Bill.

Subitem 19(2) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the cancellation or revocation, in full, of the registration of the establishment; and

(b) the cancellation or revocation had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to revoke the registration under subclause 138(1) of the 2019 Bill and the revocation takes effect after the commencement time in accordance with the notice. A note will be inserted after subitem 19(2) to advise the reader that the decision to revoke the registration will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

Subitem 19(3) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment notice in writing of the cancellation or revocation, in part; and

(b) the cancellation or revocation had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to suspend the registration, in part, in accordance with the notice, under subclause 127(1) of the 2019 Bill. This suspension of registration, in part, will have the effect after the commencement time in
accordance with the notice. A note will be inserted after subitem 19(3) to advise the reader that the decision to suspend the registration will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

Notice given before commencement time by occupier of registered establishment terminating or ceasing registration

Subitem 19(4) of Schedule 3 to the Bill will apply if:

(a) the occupier of a registered establishment had, under an old Export Control Order, notified the Secretary, in writing:
   (i) of the termination, in full, of the registration of the establishment; or
   (ii) that the occupier wished the registration to cease; and
(b) the notice is received by the Secretary after the commencement time.

In these circumstances the Secretary must, under subclause 137(3) of the 2019 Bill, revoke the registration of the establishment, in accordance with the notice, with effect:

(c) 7 days after the notice is given to the Secretary; or
(d) if a later date is specified in the notice — on that later date.

Subitem 19(5) of Schedule 3 to this Bill will apply if:

(a) the occupier of a registered establishment had, under an old Export Control Order, notified the Secretary, in writing, of the termination, in part, of the registration of the establishment; and
(b) the notice is received by the Secretary after the commencement time.

In these circumstances, the Secretary must under subclause 125(5) of the 2019 Bill, suspend the registration of the establishment, in part, in accordance with the notice, with effect:

(c) 7 days after the notice is given to the Secretary; or
(d) if a later day is specified in the notice—on that later day.

This will give effect to the request of the occupier to terminate or cease the registration.

Item 20 Application for registration etc. made but not decided before commencement time

Subitem 20(1) of Schedule 3 to this Bill will provide an application provision for item 20.

Item 20 will apply if:

(a) an application had been made to the Secretary under an old Export Control Order:
   (i) to register an establishment; or
   (ii) to renew the registration of an establishment; or
   (iii) to vary the registration of an establishment or approve an alteration or addition to an establishment; and
(b) no decision on the application had been made, or had been taken to have been made, before the commencement time.

Subitem 20(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 20(1), after the commencement time:
(a) an application referred to in subparagraph (1)(a)(i) will be taken to be an application made under clause 111 of the 2019 Bill (which will deal with applications to register an establishment); and

(b) an application referred to in subparagraph (1)(a)(ii) will be taken to be an application made under clause 116 of the 2019 Bill (which will deal with applications to renew the registration); and

(c) an application referred to in subparagraph (1)(a)(iii) will be taken to be an application made under subclause 120(1) of the 2019 Bill (which will deal with applications to vary a registration or approval of alteration of establishment).

A note will be inserted after subitem 20(2) to advise the reader that clause 378 of the 2019 Bill (which will require additional or corrected information in relation to an application to be given in certain circumstances) will apply in relation to the applications set out in subitem 20(1).

Subitem 20(3) of Schedule 3 to the Bill will provide that clause 377, paragraph 379(1)(a) and subclause 379(4) of the 2019 Bill, which will set out the requirements for certain applications under the 2019 Bill, will not apply to applications set out in subitem 20(1). This will be because, although the applications are taken to be an application under the 2019 Bill and for all intents and purposes, it will be such an application, it was submitted before the requirements for such applications became law. The effect of subitem 20(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 20(4) of Schedule 3 to this Bill will deal with consideration periods. Subitem 20(4) will provide that if under the old Export Control Order there was an old consideration period then in working out the consideration period for the application for the purposes of clause 379 of the 2019 Bill:

(a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill; and

(b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.

Subitem 20(5) of Schedule 3 to this Bill will provide that if subitem 20(4) does not apply in relation to the application, the consideration period for the application for the purposes of clause 379 of the 2019 Bill will start on the day the commencement time occurs. A note will be inserted after subitem 20(5) to advise the reader that the initial consideration period for an application to which subitem 20(5) applies is the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill.

Subitems 20(4) and (5) of Schedule 3 to this Bill will have the effect of including the consideration period (if any) that was set out in an old Export Control Order in relation to calculating the consideration period in relation to the application. This will result in no detriment to the applicant where an application has been made but has not been dealt with by the Department before the commencement time. If there was no consideration period in an old Export Control Order, subitem 20(5) will mean that a consideration period will start at the same time as the commencement of the 2019 Bill. As the application referred to in subitem 20(1) will be taken to be an application under the 2019 Bill, the initial consideration period will be able to be extended under subclauses 379(5), 379(6), 379(7) or 379(8) of the 2019 Bill.
Item 21  Application for registration etc. made and decided but applicant not notified before commencement time

Subitem 21(1) of Schedule 3 to this Bill will provide an application provision for item 21. Item 21 will apply if:

(a) an application had been made to the Secretary under an old Export Control Order:
   (i) to register an establishment; or
   (ii) to renew the registration of an establishment; or
   (iii) to vary the registration of an establishment or approve an alteration or addition to an establishment; and

(b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.

Subitem 21(2) of Schedule 3 to this Bill will provide that in the circumstances described by subitem 21(1), the Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision. In addition, subitem 21(3) of Schedule 3 to this Bill will provide that if the decision was to register the establishment, the establishment will be taken to be registered under Chapter 4 of the 2019 Bill.

Subitem 21(4) of Schedule 3 to this Bill will provide that if the decision was to register the establishment or renew the registration, the notice under subitem 21(2) must state the information referred to in paragraph 114(b) of the 2019 Bill. This will include such matters as any conditions additional to those set out in the rules. In addition, the Secretary must give the applicant a certificate of registration stating the information referred to in paragraph 114(a) of the 2019 Bill. This will include such matters as the registration number allocated to the establishment, the date the registration takes effect and that the registration remains in force indefinitely or state the expiry date for the registration.

Subitem 21(5) of Schedule 3 to this Bill will provide that if the decision was to vary the registration of an establishment or approve an alteration or addition to an establishment, then:

(a) the notice under subitem 21(2) must state the information referred to in subclause 121(2) of the 2019 Bill; and

(b) if the certificate of registration for the establishment needs to be changed to take account of the variation or approval, the Secretary must, within 7 days after the commencement time, give the occupier of the establishment a new certificate of registration including the variation or alteration or addition that has been approved.

Subclause 121(2) of the 2019 Bill will provide that the notice must include such matters as the details of the variation or approval and the date the variation or approval takes effect.

Subitem 21(6) of Schedule 3 of this Bill will provide that if the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem 21(2) must state:

(a) the reasons for the decision; and

(b) information about the applicant’s right to have the decision reviewed.

Subitem 21(6) will be consistent with clause 382 of the 2019 Bill which will deal with notices of decisions and the requirement for the notice to state the terms of the decision, the reasons for the decision and information about the person’s right to have the decision reviewed. A
note will be inserted after subitem 21(6) to refer the reader to item 78 of Schedule 3 to this Bill, which will deal with review of decisions made under old Export Control Order. The effect of item 78 is to save the review rights that existed at the time the decision was made.

**Item 22 Notice or direction to take action given before commencement time**

Subitem 22(1) of Schedule 3 to this Bill will provide an application provision for item 22. Item 22 will apply if:

(a) a person who was, or who had been, the occupier of a registered establishment before the commencement time had been given notice of the cancellation or revocation of the registration of the establishment under an old Export Control Order; and

(b) the person had been given a notice or direction (the old notice or direction) under the old Export Control Order requiring the person to take specified action in relation to any of the following:

(i) export operations carried out at the establishment;

(ii) prescribed goods prepared at the establishment;

(iii) official marks, export permits or government certificates that were in the possession, or under the control, of the person; and

(c) the notice or direction had not been complied with before the commencement time.

Subitem 22(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 22(1), the person must comply with the notice or direction. The effect of item 22 will be to preserve the effect of notices or directions given before commencement and ensure that requirements in these notices or directions must still be complied with after the commencement time.

Subitem 22(3) of Schedule 3 to this Bill will provide that a person will commit a fault-based offence if the person is given a notice or direction under an old Export Control Order and the person fails to comply with the old notice or direction, as outlined in subitem 22(1) and 22(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subitem 22(4) of Schedule 3 to this Bill will provide that a person will be liable to a civil penalty if the person is given a notice or direction under an old Export Control Order and the person fails to comply with the old notice or direction, as outlined in subitem 22(1) and 22(2). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subitem 22(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subitem 22(2) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subitem 22(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.
The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by a registered establishment. Conduct that contravenes the requirements that will be set out in this provision may undermine the integrity of the regulatory framework provided for by the 2019 Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

Item 23 Variation of documents etc. relating to registration to replace references to old laws

Subitem 23(1) of Schedule 3 to this Bill will provide an application provision for item 23. Item 23 will apply in relation to a registered establishment for which registration will continue in force after the commencement time under subitem 17(3) of Schedule 3 to this Bill.

Subitem 23(2) of Schedule 3 to this Bill will provide that the Secretary may vary a document or record retained by the Secretary in relation to the registration of the establishment to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill, or a provision of the 2019 Bill or a provision of rules made under that Bill. This will complement item 3 of Schedule 3 to this Bill which will provide an interpretive provision in relation to references to an old Export Control Law in instruments etc. (such as an instrument of exemption or a certificate).

Subitem 23(3) of Schedule 3 of this Bill will provide that in addition to the Secretary being able to vary the registration, the Secretary may direct the occupier of the establishment to vary the certificate of registration for the establishment, or any notice or other document or record retained by the occupier relating to the registration of the establishment, by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill, or a provision of the 2019 Bill or a provision of rules made under that Bill. The direction must be in writing. To give effect to this provision, subitem 23(4) of Schedule 3 to this Bill will provide that if the occupier of an establishment is given a direction under subitem 23(3), the occupier must comply with the direction:

(a) within 2 years after receiving it; or
(b) within any longer period granted by the Secretary on application, in writing, by the occupier.

In addition, subitem 23(5) of Schedule 3 to this Bill will provide that subparagraphs 127(1)(g)(i) and 138(1)(g)(i) of the 2019 Bill will apply in relation to the registration as if the reference to a direction in those subparagraphs included a reference to a direction given to the occupier of a registered establishment under subitem 23(3). A note will be inserted after subitem 23(5) to advise the reader of the effect of this provision is that the registration of the establishment may be suspended or revoked if the occupier of the establishment fails to comply with the direction (see subparagraphs 127(1)(g)(i) or 138(1)(g)(i) of the 2019 Bill).
Part 5—Approved arrangements

Item 24  Approved arrangements in force immediately before commencement time

Subitem 24(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 24. Item 24 will apply to an arrangement that was approved under an old Export Control Order if the approved arrangement was in force immediately before the commencement time. Subitem 24(2) will provide that the approval will be taken to be in force even if the approved arrangement was suspended, in full or in part, at the commencement time.

Approved arrangement continues in force

Subitem 24(3) will provide that the approved arrangement will continue in force after the commencement time as if it were an approved arrangement under Chapter 5 of the 2019 Bill. Subitem 24(3) will also provide that the approved arrangement will continue in force after the commencement time, subject to any conditions stated in the notice of approval of the arrangement or any later notice given to the holder of the arrangement by the Secretary before the commencement time.

Two notes will be inserted after subitem 24(3). Note 1 will advise the reader that the approved arrangement will also be subject to the conditions provided by the 2019 Bill and the conditions prescribed by rules made for the purposes of paragraph 152(1)(b) of that Bill and will refer the reader to subclause 152(1) of that Bill. Note 2 will provide that the approved arrangement may be varied under Chapter 5 of the 2019 Bill or item 32 of this Schedule (which will deal with variations in relation to references to an old Export Control Law). The note will also advise that the approved arrangement may be suspended or revoked under Chapter 5 of the 2019 Bill.

Holder of approved arrangement

Subitem 24(4) of Schedule 3 to this Bill will provide that, for the purposes of the 2019 Bill, the person to whom the approval of the arrangement had been given under the old Export Control Order will be taken to be the holder of the approved arrangement under the 2019 Bill. This provision will be required as there are no references to the holder of an approved arrangement under the old Export Control Orders unlike the references to, for example, the manager of an accredited property in the old Export Control Orders.

Expiry of approved arrangement

Subitem 24(5) of Schedule 3 to this Bill will deal with the period of effect of an approved arrangement. The item will provide that if there was no expiry date for the approved arrangement under the old Export Control Order, the approved arrangement will continue in force after the commencement time unless revoked under Part 6 of Chapter 5 of the 2019 Bill or is taken to have been revoked under clause 188 of that Bill. Clause 188 will deal with persons ceasing to operate the business etc. covered by the approved arrangement. In addition, subitem 24(6) of Schedule 3 to this Bill will provide that if there was an expiry date for the approved arrangement under the old Export Control Order, the approved arrangement will continue in force until that expiry date unless:

(a) it is renewed under Part 3 of Chapter 5 of the 2019 Bill on or before that date; or
(b) it is revoked under Part 6 of Chapter 5 of that Bill or is taken to have been revoked under subclause 188 of that Bill on or before that date.
Item 25  Suspension of approved arrangement

Show cause notice given before commencement time

Subitem 25(1) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to the holder of an approved arrangement under an old Export Control Order to show cause, within a specified period, why the approval of the arrangement should not be suspended; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it were a notice that had been given at that time to the holder of the approved arrangement under subclause 171(2) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 14 days to respond to the notice. A note will be inserted after subitem 25(1) to advise the reader that the 14 day period for the person to respond to the show cause notice starts on the day the notice was given to the person (see paragraph 171(3)(c) of the 2019 Bill). Clause 171 of the 2019 Bill will set out the general grounds for suspension of the approved arrangement.

Notice of payment due given before commencement time

Subitem 25(2) of Schedule 3 to this Bill will apply if:

(a) a notice had been given to a person (the debtor) to whom the approval of an arrangement had been given under an old Export Control Order because the amount of a relevant Commonwealth liability of the debtor had not been paid by the due date for payment; and

(b) the period for paying the amount, or entering into an arrangement with the Secretary to pay the amount, had not ended before the commencement time.

In these circumstances, the notice of payment due will continue to have effect after the commencement time as if it were a notice that had been given at that time to the debtor under paragraph 172(1)(b) of the 2019 Bill. This will mean that any period between when the notice was given and the commencement time of the 2019 Bill will be taken into account for the purposes of calculating the 8 days for paying the amount or entering into an arrangement to pay the amount. Clause 172 of the 2019 Bill will set out having an overdue relevant Commonwealth liability as a ground for suspension of an approved arrangement.

A note will be inserted after subitem 25(2) to advise the reader that if, within 8 days after the notice was given to the debtor, the amount of the relevant Commonwealth liability is not paid or the debtor does not enter into an arrangement with the Secretary to pay the amount, the Secretary may suspend the approved arrangement and will refer the reader to subclause 172(1) of the 2019 Bill for information about suspending an approved arrangement.

Approved arrangement suspended immediately before commencement time

Subitem 25(3) of Schedule 3 to this Bill will apply if:

(a) an approved arrangement had been suspended, in full or in part, under an old Export Control Order; and

(b) the suspension was in force immediately before the commencement time.
In these circumstances, the approved arrangement will be taken to be suspended (in whole or in part) after the commencement time under Part 5 of Chapter 5 of the 2019 Bill. This will continue a suspension after the commencement time in relation to a suspension that was in place before the commencement time.

**Notice of suspension given before commencement time**

Subitem 25(4) of Schedule 3 to this Bill will apply if:

(a) the Secretary had, under an old Export Control Order, given the holder of an approved arrangement notice in writing of the suspension, in full or in part, of the approved arrangement; and

(b) the suspension had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to suspend the approved arrangement, in full or in part, under subclause 171(1) of the 2019 Bill and the suspension takes effect after the commencement time in accordance with the notice.

Two notes will be inserted after subitem 25(4). Note 1 will advise the reader that the decision to suspend the approved arrangement will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill. Note 2 will advise the reader that the Secretary may revoke the suspension and refers the reader to clause 175 of the 2019 Bill.

**Item 26  Revocation of approved arrangement**

**Notice given before commencement time by Secretary**

Subitem 26(1) of Schedule 3 to this Bill will provide an application provision for subitem 26(1). Subitem 26(1) will apply if:

(a) a notice had been given to a person under an old Export Control Order to show cause, within a specified period, why the approval of an approved arrangement held by the person should not be revoked; and

(b) the period had not ended before the commencement time.

In these circumstances, the show cause notice will continue to have effect after the commencement time as if it were a notice to revoke the approved arrangement under subclause 179(2) of the 2019 Bill. A note will be inserted after subitem 26(1) to advise the reader that the 14 day period for the holder of the approved arrangement to respond to the show cause notice starts on the day the notice is given to the holder (see paragraph 179(3)(b) of the 2019 Bill).

Subitem 26(2) of Schedule 3 to this Bill will provide an application provision for subitem 26(2). Subitem 26(2) will apply if:

(a) the Secretary had, under an old Export Control Order, given the holder of an approved arrangement notice in writing of the revocation, in full, of the approval of an approved arrangement held by the person; and

(b) the revocation had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to revoke the approved arrangement under subclause 179(1) of the 2019 Bill and the revocation will take effect after the commencement time in accordance with the notice. A note will be inserted after subitem 26(2) to advise the reader that the decision to revoke the approved arrangement will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.
Subitem 26(3) of Schedule 3 to this Bill will provide an application provision for subitem 26(3). Subitem 26(3) will apply if:

(a) the Secretary had, under an old Export Control Order, given a person notice in writing of the revocation, in part, of the approval of an approved arrangement held by the person; and

(b) the revocation had not taken effect before the commencement time.

In these circumstances, the Secretary will be taken to have decided to suspend the approved arrangement, in part, in accordance with the notice, under subclause 171(1) of the 2019 Bill and the suspension takes effect after the commencement time in accordance with the notice. A note will be inserted after subitem 26(3) and will advise the reader that the decision to suspend the approved arrangement will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

Notice given before commencement time by occupier of registered establishment terminating approved arrangement

Subitem 26(4) of Schedule 3 of this Bill will deal with requests to terminate the approved arrangement in full. The item will apply if:

(a) the occupier of a registered establishment had, under an old Export Control Order, given written notice to the Secretary of the termination, in full, of the approval of the occupier’s approved arrangement for the establishment; and

(b) the notice is received by the Secretary after the commencement time.

In these circumstances, the Secretary must, under subclause 178(3) of the 2019 Bill, revoke the approved arrangement, in accordance with the notice, with effect 7 days after the notice is given to the Secretary or if a later day is specified in the notice—on that later day.

Subitem 26(5) of Schedule 3 of this Bill will deal with requests to terminate the approved arrangement in part. The item will apply if:

(a) the occupier of a registered establishment had, under an old Export Control Order, given written notice to the Secretary of the termination, in part, of the approval of the occupier’s approved arrangement for the establishment; and

(b) the notice is received by the Secretary after the commencement time.

In these circumstances, the Secretary must, under subclause 169(5) of the 2019 Bill, suspend the approved arrangement, in part in accordance with the notice, with effect 7 days after the notice is given to the Secretary or if a later day is specified in the notice—on that later day.

The references in subitems 26(4) and 26(5) to the occupier of a registered establishment rather than the holder of an approved arrangement will be because it was the occupier who held the arrangement under an old Export Control Order.

Item 27 Variation of approved arrangement by occupier of registered establishment implemented before commencement time but record not made

Subitem 27(1) of Schedule 3 to this Bill will provide an application provision for item 27. Item 27 will apply if:
(a) before the commencement time, the occupier of a registered establishment implemented a variation of an approved arrangement for the establishment; and
(b) a record of the variation was required to be made under an old Export Control Order; and
(c) the record was not made before the commencement time.

Subitem 27(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 27(1), as soon as practicable after the commencement time, the person who will be the holder of the approved arrangement under the 2019 Bill must comply with subclause 159(2) of that Bill in relation to the variation. Subclause 159(2) will provide that if the holder of an approved arrangement implements a variation, the holder must as soon as practicable after doing so, make a written record of the variation and the reasons for the variation.

Item 28 Application for approval of proposed arrangement etc. made but not decided before commencement time

Subitem 28(1) of Schedule 3 to this Bill will provide an application provision for item 28. Item 28 will apply if:

(a) an application had been made to the Secretary under an old Export Control Order:

(i) to approve a proposed arrangement in respect of operations to prepare a kind of prescribed goods for export; or

(ii) to renew an approved arrangement; or

(iii) to approve a variation of an approved arrangement; and

(b) no decision on the application had been made, or had been taken to have been made, before the commencement time.

Subitem 28(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 28(1), after the commencement time:

(a) an application referred to in subparagraph (1)(a)(i) will be taken to be an application made under clause 150 of the 2019 Bill (which will deal with applications to approve a proposed arrangement); and

(b) an application referred to in subparagraph (1)(a)(ii) will be taken to be an application made under clause 155 of the 2019 Bill (which will deal with applications to renew an approved arrangement); and

(c) an application referred to in subparagraph (1)(a)(iii) will be taken to be an application made under subclause 161(1) of the 2019 Bill (which will deal with applications to vary an approved arrangement).

A note will be inserted after subitem 28(2) to advise the reader that clause 378 of the 2019 Bill (which will require additional or corrected information in relation to an application to be given in certain circumstances) will apply in relation to the applications set out in subitem 28(1).

Subitem 28(3) of Schedule 3 to the Bill will provide that clause 377, paragraph 379(1)(a) and subclause 379(4) of the 2019 Bill, which will set out the requirements for certain applications under the 2019 Bill, will not apply to applications set out in subitem 28(1). This will be because, although the applications are taken to be an application under the 2019 Bill and for all intents and purposes, it will be such an application, it was submitted before the
requirements for such applications became law. The effect of subitem 28(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 28(4) of Schedule 3 to this Bill will deal with consideration periods. Subitem 28(4) will provide that if under the old Export Control Order there was an old consideration period then in working out the consideration period for the application for the purposes of clause 379 of the 2019 Bill:

(a) the initial consideration period for the application is taken to be the number of days in the old consideration period instead of the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill; and

(b) the period starting on the day the Secretary received the application and ending on the day immediately before the commencement time must be counted.

Subitem 28(5) of Schedule 3 to this Bill will provide that if subitem 28(4) does not apply in relation to the application, the consideration period for the application for the purposes of clause 379 of the 2019 Bill will start on the day the commencement time occurs. A note will be inserted after subitem 28(5) to advise the reader that the initial consideration period for an application to which subitem 28(5) applies is the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill.

Subitems 28(4) and (5) of Schedule 3 to this Bill will have the effect of including the consideration period (if any) that was set out in an old Export Control Order in relation to calculating the consideration period in relation to the application. This will result in no detriment to the applicant where an application has been made but has not been dealt with by the Department before the commencement time. If there was no consideration period in an old Export Control Order, subitem 28(5) will mean that a consideration period will start at the same time as the commencement of the 2019 Bill. As the application referred to in subitem 28(1) will be taken to be an application under the 2019 Bill, the initial consideration period will be able to be extended under subclauses 379(5), 379(6), 379(7) or 379(8) of the 2019 Bill.

**Item 29 Application for approval of proposed arrangement etc. made and decided but applicant not notified before commencement time**

Subitem 29(1) of Schedule 3 to this Bill will provide an application provision for item 29. Item 29 will apply if

(a) an application had been made to the Secretary under an old Export Control Order:
   (i) to approve a proposed arrangement in respect of operations to prepare a kind of prescribed goods for export; or
   (ii) to renew an approved arrangement; or
   (iii) to approve a variation of an approved arrangement; and

(b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.

Subitem 29(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 29(1), the Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision. In addition, subitem 29(3) of Schedule 3 to this
Bill will provide that if the decision was to approve the proposed arrangement, the arrangement will be taken to be an approved arrangement under Chapter 5 of the 2019 Bill.

Subitem 29(4) of Schedule 3 to this Bill will provide that if the decision was to approve a proposed arrangement or renew an approved arrangement, the notice under subitem 29(2) must state the information referred to in clause 153 of the 2019 Bill. Additionally, subitem 29(5) of Schedule 3 to this Bill will provide that if the decision was to approve a variation of an approved arrangement, the notice under subitem 29(2) must state information referred to in subclause 162(2) of the 2019 Bill.

Subitem 29(6) of Schedule 3 to this Bill will provide that if the Secretary had decided, or had been taken to have decided, to refuse an application, then the notice provided under subitem 29(2) must state the reasons for the decision and information about the applicant’s right to have the decision reviewed. A note will be inserted after subitem 29(6) to refer the reader to item 78 of Schedule 3 to this Bill, which will deal with review of decisions made under old Export Control Order. The effect of item 78 is to save the review rights that existed at the time the decision was made.

**Item 30 Variation of approved arrangement required by Secretary before commencement time**

Subitem 30(1) of Schedule 3 to this Bill will provide an application provision for item 30. Item 30 will apply if:

(a) the Secretary had, under an old Export Control Order, given the occupier of a registered establishment a written notice requiring the occupier to submit to the Secretary a variation of an approved arrangement for the establishment; and

(b) the occupier had not submitted the required variation to the Secretary before the commencement time.

The reference in subitem 30(1) is to the occupier of a registered establishment because under an old Export Control Order, the occupier holds the approved arrangement for the establishment.

Subitem 30(2) of Schedule 2 to this Bill will provide that in the circumstances described in subitem 30(1), the notice continues to have effect after the commencement time as if it were a variation notice given under subclause 166(1) of the 2019 Bill. Subclause 166(1) will provide that the notice will require the holder of an approved arrangement to vary the approved arrangement as specified in the notice and to give the varied arrangement to the Secretary, or otherwise make the varied arrangement available to the Secretary for evaluation by the date specified in the notice.

**Item 31 Notice or direction to take action given before commencement time**

Subitem 31(1) of Schedule 3 to this Bill will provide an application provision for item 31. Item 31 will apply if:

(a) a person was given notice of the revocation of an approved arrangement held by the person under an old Export Control Order; and

(b) the person had been given a notice or direction (the old notice or direction) under the old Export Control Order requiring the person to take specified action in relation to any of the following:

(i) export operations covered by the approved arrangement;
(ii) prescribed goods covered by the approved arrangement;

(iii) official marks, export permits or government certificates that were in the possession, or under the control, of the person; and

(c) the notice or direction had not been complied with before the commencement time.

Subitem 31(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 31(1), the person must comply with the notice or direction. The effect of item 31 will be to preserve the effect of notices or directions given before commencement and ensure that requirements in these notices or directions must still be complied with after the commencement time.

Subitem 31(3) of Schedule 3 to this Bill will provide that a person will commit a fault-based offence if the person is given a notice or direction under an old Export Control Order and the person fails to comply with the old notice or direction, as outlined in subitem 31(1) and 31(2). The fault-based offence will be subject to a penalty of imprisonment for two years or a fine of 120 penalty units (or both). The maximum fine for a body corporate for a contravention will be 600 penalty units.

Subitem 31(4) of Schedule 3 to this Bill will provide that a person will be liable to a civil penalty if the person is given a notice or direction under an old Export Control order and the person fails to comply with the old notice or direction, as outlined in subitem 31(1) and 31(2). The civil penalty provision will be subject to a penalty of 240 penalty units. This will be the maximum civil penalty that a relevant court will be able to order an individual to pay the Commonwealth for a contravention of subitem 31(2). The maximum civil penalty that a relevant court will be able to order a body corporate to pay the Commonwealth for a contravention of subitem 31(2) will be 1,200 penalty units, as the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act will apply.

The civil penalty provided for in subitem 31(4) will be twice as high as the penalty available for the criminal offence. This will ensure that the penalty will act as a deterrent, particularly for corporations, and recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

The penalties for both the fault-based offence and the civil penalty provision reflect the seriousness of failing to comply with a direction of the Secretary in relation to export operations and goods that were covered by an approved arrangement. Conduct that contravenes the requirements that will be set out in this provision may undermine the integrity of the regulatory framework provided for by the 2019 Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access. The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

The Secretary will have the ability to choose the most appropriate enforcement action based on the circumstances, which will ensure that enforcement action will be commensurate to the contravening conduct and the corresponding consequences of that contravention.

**Item 32 Variation of approved arrangement to replace references to old laws**

Subitem 32(1) of Schedule 3 to this Bill will provide an application provision for item 32. Item 32 will apply in relation to an approved arrangement that will continue in force after the commencement time under subitem 24(3) of Schedule 3 to this Bill.
Subitem 32(2) of Schedule 3 of this Bill will provide that the Secretary may direct the holder of the approved arrangement to vary the approved arrangement by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill or a provision of the 2019 Bill or a provision of rules made under that Bill. The direction must be in writing. To give effect to this provision, subitem 32(3) of Schedule 3 to this Bill will provide that if the holder of the approved arrangement is given a direction under subitem 32(2), the holder must comply with the direction:

(a) within 2 years after receiving it; or
(b) within any longer period granted by the Secretary on application, in writing, by the holder.

In addition, subitem 32(4) of Schedule 3 to this Bill will provide that subparagraphs 171(1)(h)(i) and 179(1)(h)(i) of the 2019 Bill will apply in relation to the approved arrangement as if the reference to a direction in those subparagraphs included a reference to a direction given to the holder of an approved arrangement under subitem 32(2). A note will be inserted after subitem 32(4) to advise the reader of the effect of this provision is that the approved arrangement may be suspended or revoked if the holder fails to comply with the direction (see subparagraphs 171(1)(h)(i) or 179(1)(h)(i) of the 2019 Bill).

Part 6—Export licences

Division 1 – Meat and live-stock

Item 33 Export licences in force immediately before commencement time

Subitem 33(1) of Schedule 3 to this Bill will provide an application provision for item 33. Item 33 will apply when there is an export licence in force under section 10 of old Part 2 of the AMLI Act immediately before the commencement time. Subitem 33(2) of Schedule 3 to the Bill will provide that in the circumstances described in subitem 33(1), an export licence is taken to have been in force under section 10 of old Part 2 of the AMLI Act immediately before the commencement time even if the export licence was suspended at that time.

Export licence continues in force

In addition, subitem 33(3) of Schedule 3 to this Bill will provide that the export licence will continue in force after the commencement time as if it had been granted under clause 191 of the 2019 Bill and subject to any conditions stated in the licence. This will transition existing export licences subject to the same conditions and prevent the need to reissue such licences after commencement of the 2019 Bill.

Two notes will be inserted after subitem 33(3). Note 1 will advise the reader that the export licence is also subject to the conditions provided by the 2019 Bill and the conditions prescribed by rules made for the purposes of paragraph 192(1)(b) of that Bill (see subclause 192(1) of the 2019 Bill). Note 2 will advise the reader that the export licence may be varied under Chapter 6 of the 2019 Bill and item 45 of this Schedule (which will deal with variations in relation to references to an old Export Control Law), or suspended or revoked under Chapter 6 of the 2019 Bill. Both notes will reflect the fact that for all intents and purposes the export licence was issued under the 2019 Bill.

Expire of export licence

Subitem 33(4) of Schedule 3 to this Bill will deal with the expiry of an export licence. The subitem will provide that the export licence will continue in force for the period stated in the
licence or, if applicable, in the renewal instrument under subsection 22(6) of old Part 2 of the AMLI Act, unless renewed under Part 3 of Chapter 6 of the 2019 Bill, or revoked under Part 6 of that Chapter, before the end of that period.

**Item 34 Application for export licence etc. made but not decided before commencement time**

Subitem 34(1) of Schedule 3 to this Bill will provide an application provision for item 34. Item 34 will apply if:

(a) an application had been made to the Secretary under old Part 2 of the AMLI Act or old AMLI Regulations:
   (i) to grant an export licence; or
   (ii) to renew an export licence; or
   (iii) to approve a variation of a live-stock export licence; and

(b) no decision on the application had been made, or had been taken to have been made, before the commencement time.

Subitem 34(1) does not refer to an application to approve the variation of a meat export licence as old Part 2 of the AMLI Act and the old AMLI regulations do not provide for the ability to vary a meat export licence.

Subitem 34(2) of Schedule 3 to this Bill will provide, that in the circumstances described in subitem 34(1), after the commencement time:

(a) an application referred to in subparagraph (1)(a)(i) is taken to be an application made under clause 190 of the 2019 Bill (which will deal with applications to grant an export licence); and

(b) an application referred to in subparagraph (1)(a)(ii) is taken to be an application made under clause 195 of the 2019 Bill (which will deal with applications to renew an export licence); and

(c) an application referred to in subparagraph (1)(a)(iii) is taken to be an application made under subclause 199(1) of the 2019 Bill (which will deal with applications to vary an export licence).

A note will be inserted after subitem 34(2) to advise the reader that clause 378 of the 2019 Bill (which will require additional or corrected information in relation to an application to be given in certain circumstances) will apply in relation to the applications set out in subitem 34(1).

Subitem 34(3) of Schedule 3 to the Bill will provide that clause 377, paragraph 379(1)(a) and subclause 379(4) of the 2019 Bill, which will set out the requirements for certain applications under the 2019 Bill, will not apply to applications set out in subitem 34(1). This is because, although the applications are taken to be an application under the 2019 Bill and for all intents and purposes, it is such an application, it was submitted before the requirements for such applications became law. The effect of subitem 34(3) is to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 34(4) of Schedule 3 to this Bill will deal with consideration periods in relation to an application referred to in subitem 34(1). Subitem 34(4) will provide that if the application is
to grant an export licence, then in working out the consideration period for the application for the purposes of clause 379 of the 2019 Bill:

(a) the initial consideration period for the application is taken to be the period of 2 months starting on the day the application was made instead of the period prescribed for an application of that kind by the rules made for the purposes of subclause 379(3) of the 2019 Bill; and

(b) the period starting on the day the Secretary received the application and ending on the day immediately before commencement time must be counted.

Subitem 34(4) of Schedule 3 to this Bill will have the effect of including the period between when the application was lodged before the commencement time in calculating the consideration period in relation to dealing with the application. This will mean that there is no detriment to the applicant where an application has been made but has not been dealt with by the Department before the commencement time. The initial consideration period will be able to be extended under subclauses 379(5), 379(6), 379(7) or 379(8) of the 2019 Bill.

Subitem 34(5) of Schedule 3 to this Bill will deal with the applications to renew an export licence or approve a variation of a live-stock export licence. In those circumstances, the consideration period for the application for the purposes of clause 379 of the 2019 Bill starts on the day the commencement time occurs as there are no consideration periods under old Part 2 of the AMLI Act or the old AMLI Regulations that relate to renewals of variations. A note will be inserted after subitem 34(5) to advise the reader that the initial consideration period for an application to which subitem 34(5) applies is the period prescribed for an application of that kind by rules made for the purposes of subclause 379(3) of the 2019 Bill.

Item 35 Application for export licence etc. made and decided but applicant not notified before commencement time

Subitem 35(1) of Schedule 3 to this Bill will provide an application provision for item 35. Item 35 will apply if:

(a) an application had been made to the Secretary under old Part 2 of the AMLI Act or old AMLI Regulations:

(i) to grant an export licence; or

(ii) to renew an export licence; or

(iii) to approve a variation of a live-stock export licence; and

(b) a decision on the application had been made, or had been taken to have been made, before the commencement time but notice of the decision had not been given to the applicant before that time.

Subitem 35(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 35(1), the Secretary must, as soon as practicable after the commencement time, give the applicant written notice of the decision.

Subitem 35(3) of Schedule 3 to this Bill will provide that if the decision was to grant an export licence, the export licence is taken to have been granted under Chapter 6 of the 2019 Bill. This will have the effect of transitioning an export licence to prevent a new one having to be issued after the commencement time.

Subitem 35(4) of Schedule 3 to this Bill will provide that if the decision was to grant or renew an export licence, the Secretary must give the applicant an export licence stating the information referred to in subclause 193(2) of the 2019 Bill. This include such matters as the
number allocated to the licence, the date the licence takes affect and the period of effect of the licence.

Subitem 35(5) of Schedule 3 to this Bill will provide that if the decision was to approve a variation of a live-stock export licence:

(a) the notice under subitem 35(2) must state the information referred to in subclause 200(2) of the 2019 Bill (this includes such matters as the details of the variation, and the date the variation takes effect); and

(b) if the licence needs to be changed to take account of the variation, the Secretary must, within 7 days after the commencement time, give the holder of the licence a new live-stock export licence including the variation.

Subitem 35(5) does not refer to an application to approve the variation of a meat export licence and the requirement to notify the applicant, as old Part 2 of the AMLI Act and the old AMLI Regulations do not provide for the ability to vary a meat export licence.

Subitem 35(6) of Schedule 3 to this Bill will deal with the situation where the Secretary refuses the application. The subitem will provide that if the Secretary had decided, or had been taken to have decided, to refuse the application, the notice under subitem 35(2) must state the reasons for the decision and information about the applicant’s right to have the decision reviewed.

A note will be inserted after subitem 35(6) to advise the reader that applications may be made to the Administrative Appeals Tribunal for review of decisions made before the commencement time to refuse to grant an export licence. This note will refer the reader to subsection 14(1) of old Part 2 of the AMLI Act and section 7 of the Acts Interpretation Act. An application may also be made to the Administrative Appeals Tribunal to seek review of a decision made before the commencement time to refuse to approve a variation of a live-stock export licence. This note will refer the reader to the old AMLI Regulations and section 7 of the Acts Interpretation Act. The effect of this note is to save the review rights that existed at the time the decision was made.

Item 36 Directions in force immediately before commencement time

Subitem 36(1) of Schedule 3 to this Bill will provide an application provision for item 36. Item 36 will apply if:

(a) under paragraph 17(1)(b) of old Part 2 of the AMLI Act, the Secretary had given a written direction to be complied with by the holder of an export licence; and

(b) the direction was in force immediately before the commencement time.

Subitem 36(2) will provide that in the circumstances described in subitem 36(1), the direction will continue in force after the commencement time as if it were a direction given to the holder of the export licence under clause 222 of the 2019 Bill (which will deal with the Secretary giving directions to the holder of an export licence). A note will be inserted after subitem 36(2) to advise the reader that an application may be made to the Administrative Appeals Tribunal for review of the direction and this note will refer the reader to subsection 20(2) of old Part 2 of the AMLI Act (which deals with review of directions by the Secretary) and section 7 of the Acts Interpretation Act (which preserves rights and liabilities etc.).
Item 37  Notice to show cause given before commencement time

Subitem 37(1) of Schedule 3 to this Bill will provide an application provision for item 37. Item 37 will apply if, before the commencement time, the Secretary had given a written notice to the holder of an export licence under subsection 23(1) or (2A) of old Part 2 of the AMLI Act.

Subitem 37(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 37(1), if the period of 14 days starting on the day the notice was given had not ended before the commencement time, the show cause notice will continue to have effect after the commencement time as if it were a notice given to the holder of an export licence under subclauses 205(2) and 212(2) of the 2019 Bill. Subclause 205(2) of the 2019 Bill will deal with notices to show cause in relation to proposed suspension of an export licence and subclause 212(2) of the 2019 Bill will deal with notices to show cause in relation to the proposed revocation of an export licence.

Two notes will be inserted after subitem 37(2). Note 1 will advise the reader that the 14 day period for the holder of the export licence to respond to the show cause notice starts on the day the notice was given to the holder (see paragraphs 205(3)(c) and 212(3)(b) of the 2019 Bill). Note 2 will advise the reader that the Secretary may suspend the export licence under subclause 205(1) of the 2019 Bill or revoke the export licence under subclause 212(1) of that Bill. This will reflect the fact that the licence is taken to be a licence issued under the 2019 Bill.

Subitem 37(3) of Schedule 3 to this Bill will deal with export licences that were suspended before the commencement time. This subitem will apply if:

(a) the export licence had been suspended under subsection 23(5) or paragraph 24(1)(e) or (f) of old Part 2 of the AMLI Act; and

(b) the suspension was in force immediately before the commencement time.

In these circumstances, the export licence will be taken to be suspended after the commencement time under subclause 205(1) of the 2019 Bill. This will maintain the status quo in relation to export licences that were suspended as at the commencement time.

Two notes will be inserted after subitem 37(3). Note 1 will advise the reader that the suspension may be revoked (see clause 209 of the 2019 Bill which will deal with the revocation of a suspension). Note 2 will advise the reader that applications may be made to the Administrative Appeals Tribunal for review of decisions made in relation to an export licence under section 23 or subsection 24(1) of old Part 2 of the AMLI Act (see subsections 23(8) and 24(4) of old Part 2 of the AMLI Act and section 7 of the Acts Interpretation Act). The right of review for these decisions will continue after the commencement time (see item 2 of Schedule 3 of this Bill in relation to section 7 of the Acts Interpretation Act).

Item 38  Request to cancel export licence made before commencement time

Item 38 of Schedule 3 of this Bill will apply if:

(a) the Secretary had received a written request to cancel an export licence under section 25 of old Part 2 of the AMLI Act; and

(b) the export licence had not been cancelled before the commencement time.
In this circumstance, the Secretary must, under subclause 211(3) of the 2019 Bill, revoke the export licence as requested. This will give effect to the export licence holder’s request to cancel the export licence.

Division 2 – Hardwood wood chips and other unprocessed wood

Item 39  Wood export licences in force immediately before commencement time

Subitem 39(1) of Schedule 3 to this Bill will provide that item 39 will apply to a wood export licence that was in force under old Export Control Regulations immediately before the commencement time. Two notes will be inserted after subitem 39(1). Note 1 will refer the reader to subitem 1(1) of Schedule 3 to this Bill and to the definition of a wood export licence. Note 1 also identifies that before the commencement time, wood export licences could be granted under the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79 as amended). Note 2 will clarify for the reader that this item does not apply to a wood export licence that had been surrendered under old Export Control Regulations before the commencement time, as a licence that had been surrendered would not be in force.

Subitem 39(2) of Schedule 3 to this Bill will provide that in the circumstances described under subitem 39(1), a wood export licence is taken to have been in force under the old Export Control Regulations immediately before the commencement time even if the wood export licence was suspended at that time.

Wood export licence continues in force

Subitem 39(3) of Schedule 3 to this Bill will provide that the wood export licence continues in force after the commencement time as it was granted under section 191 of the 2019 Bill. Subitem 39(3) will also provide that the wood export licence will continue in force after the commencement time subject to any conditions or restrictions specified in the licence.

Two notes will be inserted after subitem 39(3). Note 1 will advise the reader that the wood export licence will also be subject to the conditions provided by the 2019 Bill and the conditions prescribed by the rules made for the purpose of paragraph 192(1)(b) of that Bill. Note 2 will advise the reader that the wood export licence may be varied, suspended or revoked under Chapter 6 of the 2019 Bill as well as being varied under item 45 of Schedule 3 to this Bill.

Expiry of wood export licence

Subitem 39(4) of Schedule 3 to this Bill will provide that the wood export licence will continue in force unless it is revoked by the Secretary under Part 6 of Chapter 6 of the 2019 Bill.

Item 40  Application for wood export licence made but not decided before commencement time

Subitem 40(1) of Schedule 3 to this Bill will provide an application provision for item 40. Item 40 will apply if an application had been made to the Secretary to grant a wood export licence under old Export Control Regulations, and no decision had been made on the application before the commencement time.

Subitem 40(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 40(1), an application will be taken to have been made under section 190 of the 2019 Bill after the commencement time. A note will be inserted after subitem 40(2) to advise the reader that as a result of this subitem, section 378 of the 2019 Bill, which requires
additional or corrected information in relation to an application, will apply to the applications made for wood export licences.

Subitem 40(3) of Schedule 3 to this Bill will provide that section 377 (which deals with requirements for applications), paragraph 379(1)(a) (which deals with applications complying with the requirements referred to in section 377) and subsection 379(4) (which deals with at what point the consideration period for an application starts) of the 2019 Bill do not apply in relation to the application. The effect of subitem 40(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied.

Subitem 40(4) of Schedule 3 to this Bill will provide that the consideration period for the application will start on the day the commencement time occurs. A note will be inserted following subitem 40(4) that will inform the reader that the initial consideration period for the application is the period prescribed for an application of that kind by the rules for the purpose of subsection 379(3) of the 2019 Bill. The effect of subitem 40(4) will be that the consideration period for an application that was made but not decided before the commencement time starts at the commencement time and runs for the period prescribed in the rules.

**Item 41 Application for wood export licence made and decided but applicant not notified before commencement time**

Subitem 41(1) of Schedule 3 to this Bill will provide an application provision for item 41. Item 41 will apply if an application has been made to the Secretary under old Export Control Regulations to grant a wood export licence and a decision on the application had been made before commencement time but notice of the decision had not been given to the applicant before that time.

Subitem 41(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 41(1), the Secretary must as soon as practicable after the commencement time, give the applicant written notice of the decision.

Subitem 41(3) of Schedule 3 to this Bill will provide that if the decision was to grant the wood export licence, then the licence is taken to have been granted under Chapter 6 of the 2019 Bill. In the circumstances where the licence is granted, the Secretary must give the applicant an export licence stating the information referred to in subsection 193(2) of the 2019 Bill, which deals with the matters that must be stated in an export licence.

Subitem 41(4) of Schedule 3 to this Bill will provide that if the Secretary had decided to refuse the application, the notice under subitem 41(2) must provide the reasons for the decision. The notice must also state information about the applicant’s right to have the decision reviewed. A note will be inserted following subitem 41(4) that refers the reader to item 44 of Schedule 3 of this Bill, which will deal with the review of decisions made under old Export Control Regulations providing for wood export licences.

**Item 42 Suspension or variation of wood export licence to export hardwood wood chips**

Subitem 42(1) of Schedule 3 to this Bill will provide an application provision for item 42. Item 42 will apply in relation to a wood export licence to export hardwood wood chips if:

(a) the Minister had in relation to a wood export licence under old Export Control Regulations suspended the licence, or varied a condition or restriction on the licence, or imposed additional conditions or restrictions on the licence; and
(b) the period of 28 days starting on the day the action was taken had not ended before the commencement time; and
(c) the suspension or variation had not been cancelled, or the additional conditions or restrictions had not been withdrawn before the commencement time.

Subitem 42(2) of Schedule 3 to this Bill will provide that in the circumstance described in subitem 42(1), if notice of the action referred to in subitem 42(1) had not been given to the holder of the wood export licence before the commencement time, the Minister must notify the holder of the wood export licence of the action taken as soon as practicable after commencement time.

Subitem 42(3) of Schedule 3 to this Bill will provide that the Minister must investigate, or complete the investigation into, the validity of the belief under which the action was taken referred to in subitem 42(1). If the Minister finds that the belief may not be valid, subitem 42(4) will provide that the Minister must cancel the suspension or variation of conditions or restriction, or withdraw the additional conditions or restrictions as the case may be. The effect will be to re-instate the wood export licence.

Subitem 42(5) of Schedule 3 to this Bill will provide that despite anything in item 42 of Schedule 3 to this Bill, the action taken by the Minister (referred to in subitem 42(1)), ceases to have effect at the earliest of the following:

(a) the end of the period of 28 days starting on the day the action was taken; or
(b) the day on which the cancellation or withdrawal under subitem 42(4) of the suspension or variation of conditions or restrictions takes effect; or
(c) if the conditions of the wood export licence are varied or the licence is suspended or revoked under Chapter 6 of the 2019 Bill – the day when the variation, suspension or revocation under the Chapter takes effect.

A note will be inserted after subitem 42(5) to advise the reader that a decision to vary the conditions, or suspend or revoke the licence under Chapter 6 of the 2019 Bill will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

Item 43 Suspension or variation of wood export licence to export wood chips (other than hardwood wood chips) or other unprocessed wood

Subitem 43(1) of Schedule 3 to this Bill will provide an application provision for item 43. Item 43 will apply in relation to a wood export licence to export wood chips (other than hardwood wood chips) or other unprocessed wood if:

(a) the Minister had, under old Export Control Regulations suspended the licence, or varied a condition on the licence, or imposed additional conditions on the licence; and
(b) the period of 28 days starting on the day the action was taken had not ended before the commencement time; and
(c) the suspension or variation had not been removed, or the additional conditions had not been withdrawn before the commencement time.

Subitem 43(2) of Schedule 3 to this Bill will provide that in the circumstance described in subitem 43(1), if notice of the action had not been given to the holder of the wood export licence before the commencement time, the Minister must notify the holder of the wood export licence of the action taken as soon as practicable after commencement time.

Subitem 43(3) of Schedule 3 to this Bill will provide that the Minister must investigate, or complete the investigation into, the matter in respect of which the action referred to in subitem 43(1) was taken. If, after completing the investigation into the matter, the Minister
does not find any grounds for revoking the wood export licence, subitem 43(4) will provide that the Minister must remove the suspension, or variation of conditions, or withdraw the additional conditions (as required). The effect will be to re-instate the licence.

Subitem 43(5) of Schedule 3 to this Bill will provide that despite anything in item 43, the action taken by the Minister (referred to in subitem 43(1)) ceases to have effect at the earliest of the following:

(a) the end of the period of 28 days starting on the day the action was taken; or
(b) the day on which the removal or withdrawal under subitem 43(4) of the suspension or variation of conditions or withdrawn of addition conditions takes effect; or
(c) if the conditions of the wood export licence are varied or the licence is suspended or revoked under Chapter 6 of the 2019 Bill – the day when the variation, suspension or revocation under the Chapter takes effect.

A note will be inserted after subitem 43(5) to advise the reader that a decision to vary the conditions, or suspend or revoke the licence under Chapter 6 of the 2019 Bill will be a reviewable decision under Part 2 of Chapter 11 of the 2019 Bill.

Item 44  Review of decisions made under old Export Control Regulations providing for wood export licences

Subitem 44(1) of Schedule 3 to this Bill will provide an application provision for item 44. Item 44 will apply in relation to decisions made under the old Export Control Regulations that made provisions for and in relation to wood export licences. A note will be inserted after subitem 44(1) to refer the reader to the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Unprocessed Wood) Regulations (Statutory Rules 1986 No. 79, as amended) which are the relevant regulations that deal with matters in relation to wood export licences.

Subitem 44(2) of Schedule 3 to this Bill will provide that despite the repeal of the 1982 Act, the provisions of the old Export Control Regulations that deal with the review of decisions (both reconsideration by the Minister of certain decision and review of decisions by the Administrative Appeals Tribunal) will continue to apply in relation to:

(a) an initial decision made under the old Export Control Regulations before the commencement time; and
(b) a decision by the Minister (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

The effect of subitem 44(2) of Schedule 3 to this Bill is to save the review rights that existed at the time the decision was made.

Division 3 – Other provisions

Item 45  Variation of export licence to replace references to old laws

Subitem 45(1) of Schedule 3 to this Bill will provide an application provision for item 45. Item 45 will apply in relation to:

(c) an export licence that continues in force after the commencement time under subitem 33(3) of Schedule 3 to this Bill; and
(d) a wood export licence that continues in force after the commencement time under subitem 39(3) of this Schedule.
Subitem 45(2) of Schedule 3 to this Bill will provide that the Secretary may vary the export licence to replace a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill. This will complement item 3 of Schedule 3 to this Bill which will provide an interpretive provision in relation to references to an old Export Control Law in continuing instruments etc. (such as an instrument of exemption or a certificate).

Subitem 45(3) of Schedule 3 of this Bill will provide that in addition to the Secretary being able to vary the export licences, the Secretary may direct the holder of the export licence to vary the export licence by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the 2019 Bill or rules made under that Bill or a provision of the 2019 Bill or a provision of rules made under that Bill. The direction must be in writing. To give effect to this provision, subitem 45(4) of Schedule 3 to this Bill will provide that if the holder of the export licence is given a direction under subitem 45(3), the holder must comply with the direction:

(a) within 2 years after receiving it; or
(b) within any longer period granted by the Secretary on application, in writing, by the holder.

In addition, subitem 45(5) of Schedule 3 to this Bill will provide that subparagraphs 205(1)(e)(i) and 212(1)(e)(i) of the 2019 Bill will apply in relation to the export licence as if the reference to a direction in those subparagraphs included a reference to a direction given to the holder of the export licence under subitem 45(3). A note will be inserted after subitem 45(5) to advise the reader of the effect of this provision in that the export licence may be suspended or revoked if the holder of the licence fails to comply with the direction (see subparagraphs 205(1)(e)(i) and 212(1)(e)(i) of the 2019 Bill).

Part 7—Export permits

Division 1 – Export Permits

Item 46 Export permits in force immediately before commencement time

Subitem 46(1) of Schedule 3 to this Bill will provide an application provision for the purposes of item 46. Item 46 will apply to an export permit that has been granted or issued to a person under an old Export Control Order and which was in force immediately before the commencement time.

Subitem 46(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 46(1), the export permit will continue in force after the commencement time as if it had been issued under paragraph 225(1)(a) of the 2019 Bill (the provision in the 2019 Bill under which export permits are issued). In addition, any conditions to which the export permit is subject or which are applicable to the permit (because, for example, they are set out in an old Export Control Order) will continue to apply. This enables a smooth transition from the old law to the 2019 Bill and means an export permit holder will not need to have an export permit re-issued under the 2019 Bill after the commencement time.

Subitem 46(3) of Schedule 3 to this Bill will provide that, consistent with the existing law, an export permit will remain in force for 28 days after it was issued (which includes those issued before the commencement time) unless it is revoked earlier under clause 233 of the 2019 Bill. A note will be inserted after subitem 46(3) which will advise the reader that the export permit
may be varied, suspended or revoked under Part 3 of Chapter 7 of the 2019 Bill (because for all intents and purposes the export permit was issued under the 2019 Bill).

**Item 47 Application for export permit made but not decided before commencement time**

Subitem 47(1) of Schedule 3 to this Bill will provide an application provision for item 47. Item 47 will apply if a person had applied for an export permit under an old Export Control Order before the commencement time but no decision had been made on the application before the commencement time.

Subitem 47(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 47(1), such an application will be taken, after the commencement time, to be an application under clause 224 of the 2019 Bill. Subitem 47(3) will provide that clause 239 of the 2019 Bill (which will set out the requirements for applications for export permits under the 2019 Bill) will not apply to applications made before commencement time. The effect of subitem 47(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied. A note will be inserted after subitem 47(3) which will advise the reader that clause 240 of the 2019 Bill (which will require additional or corrected information in relation to the application to be given in certain circumstances) will apply in relation to applications made, but not decided, before the commencement time.

**Item 48 Request to vary export permit made but not decided before commencement time**

Subitem 48(1) of Schedule 3 to this Bill will provide an application provision for item 48. Item 48 will apply if:

(a) a person had, under an old Export Control Order requested the Secretary, in writing, to vary an export permit; and  
(b) no decision on the request had been made before the commencement time.

Subitem 48(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 48(1), the request to vary the export permit will be taken after the commencement time to be an application referred to in paragraph 229(3)(b) of the 2019 Bill. In addition, the Secretary’s decision on the request will be made under subclause 229(1) of the 2019 Bill and paragraph 229(4)(a) (decision to vary the export permit) or subclause 229(6) (decision not to make the variation) of the 2019 Bill will apply in relation to the decision.

Subitem 48(3) will provide that clause 239 of the 2019 Bill (which will set out the requirements for applications for export permits under the 2019 Bill) will not apply to applications made before commencement time. The effect of subitem 48(3) will be to prevent the retrospective effect of application requirements in the 2019 Bill, which will not have been in effect at the time the applicant applied. A note will be inserted after subitem 48(3) which will advise the reader that clause 240 of the 2019 Bill (which will require additional or corrected information in relation to the application to be provided in certain circumstances) will apply in relation to applications made, but not decided, before the commencement time.

Item 48 will enable a smooth transition and prevent the holder of a permit having to re-apply to vary an export permit in the circumstances where there had been a request to vary an export permit but a decision had not been made before the commencement time.
Item 49  Request to vary export permit made and decided but decision not notified before commencement time

Subitem 49(1) of Schedule 3 to this Bill will provide an application provision for item 49. Item 49 will apply if:

(a) a person had under an old Export Control Order requested the Secretary, in writing, to vary an export permit; and

(b) a decision on the request had been made before the commencement time but notice of the decision had not been given to the person before that time.

Subitem 49(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 49(1), if the decision was to vary the export permit, the Secretary must issue the varied export permit to the person. Subitem 49(3) of Schedule 3 to this Bill will provide that if the decision was to refuse the request, the Secretary must give the person written notice of the decision. The notice must include the reasons for the decision.

Item 49 will enable a smooth transition and prevent the holder of a permit having to re-apply to vary an export permit in the circumstances where the Secretary had made a decision on the request for variation but this had not been notified to the holder of the export permit before the commencement time.

Item 50  Variation of export permit by Secretary before commencement time but holder not notified

Subitem 50(1) of Schedule 3 to this Bill will provide an application provision for item 50. Item 50 will apply if:

(a) the Secretary had varied an export permit under an old Export Control Order (other than on the request by a person); and

(b) notice of the variation had not been given before the commencement time.

Subitem 50(2) will provide that, in the circumstances described in subitem 50(1), the Secretary must issue the varied export permit to the holder of the export permit and give the holder a written notice stating the reasons for the variation.

Item 50 will enable a smooth transition and prevent the holder of a permit having to apply for a variation of an export permit when the Secretary had varied the export permit but had not notified the holder of the export permit before the commencement time.

Part 8—Other matters relating to export

Division 1—Notices of intention to export

Item 51  Notice of intention to export prescribed goods given before commencement time

Subitem 51(1) of Schedule 3 to this Bill will provide an application provision for item 51. Item 51 will apply if:

(a) a person had given the Secretary a notice of intention to export under an old Export Control Order; and

(b) the goods had not been exported before the commencement time.

Subitem 51(2) of Schedule 3 to this Bill will provide that the notice of intention will continue in force after the commencement time as if it were a notice of intention to export the goods
given under subclause 243(1) of the 2019 Bill. A note will be inserted after subitem 51(2) which will advise the reader that clause 244 of the 2019 Bill (which will require additional or corrected information in relation to a notice of intention to export a consignment of goods to be given in certain circumstances) will apply in relation to notices issued before commencement time where the goods have not been exported before that time.

**Item 52**  
**Notice to vary, or give new, notice of intention to export prescribed goods given before commencement time**

Subitem 52(1) of Schedule 3 to this Bill will provide an application provision for item 52. Item 52 will apply if:

(a) a person had given the Secretary a notice of intention to export a kind of prescribed goods under an old Export Control Order; and

(b) before the commencement time, the Secretary had given the person a notice requiring the person:
   (i) to vary the notice of intention to export the goods; or
   (ii) to give the Secretary a new notice of intention to export the goods; and

(c) the person had not complied with the Secretary’s notice before the commencement time.

Subitem 52(2) of Schedule 3 to this Bill will provide that the person must comply with the Secretary’s notice as soon as practicable after the commencement time.

**Division 2—Trade descriptions**

**Item 53**  
**Trade descriptions applied to goods before commencement time**

Subitem 53(1) of Schedule 3 to this Bill will provide an application provision for item 53. Item 53 will apply to a trade description that was applied in accordance with an old Export Control Order to:

(a) goods that were exported before the commencement time but had not been presented to an importing country before that time; or

(b) goods that are exported after the commencement time.

Subitem 53(2) of Schedule 3 to this Bill will provide that for the purposes of subitem 53(1), a trade description was applied to goods in accordance with an old Export Control Order if it was:

(a) applied directly to the goods; or

(b) applied to any carton, can or packaging material containing the goods; or

(c) applied to, or stated in, any document relating to the goods; or

(d) applied to any covering, label, reel or other thing used in connection with the goods; or

(e) applied in any other way permitted by the old Export Control Order.

Subitem 53(3) of Schedule 3 to this Bill will provide that the trade description that is applied in this fashion will be taken to have been applied to goods for the purposes of the 2019 Bill. This will allow a smooth transition and remove any doubt about the status of the trade description applied under the old laws after the commencement time.
Division 3—Official marks

Item 54 Official marks applied to goods before commencement time

Subitem 54(1) of Schedule 3 to this Bill will provide an application provision for item 54. Item 54 will apply if:

(a) a stamp, seal, label or mark that was an official mark under an old Export Control Order was applied to goods before the commencement time; and

(b) the goods are presented to an importing country after the commencement time.

Subitem 54(2) of Schedule 3 to this Bill will provide that the stamp, seal, label or mark will continue to have effect after the commencement time as if it were an official mark for the purposes of the 2019 Bill. This will allow a smooth transition and remove any doubt about the status of the official mark after the commencement time.

Division 4 – Tariff rate quota orders

Item 55 Tariff rate quota orders in force immediately before commencement time

Item 55 of Schedule 3 to this Bill will provide a savings provision. This item will provide that despite the repeal by Schedule 1 to this Bill of the 1982 Act, orders made for the purposes of section 23A of the 1982 Act will continue in force after commencement.

Subitem 55(1) of Schedule 3 to this Bill will allow for a tariff rate quota order made by the Secretary, or a delegate of the Secretary, that was in force before commencement time, to be able to continue after that time as if the order were rules made under subclause 432(1) of the 2019 Bill for the purpose of clause 264 of the 2019 Bill. Clause 264 deals with matters equivalent to section 23A of the 1982 Act. This item will allow for a smooth transition of the current tariff rate quota systems contemplated in these provisions.

Subitem 55(2) of Schedule 3 to this Bill will provide that after commencement time references to an order in the instruments will be taken to be a reference to rules and additionally a reference to section 23A of the 1982 Act will be taken to be a reference to clause 264 of the 2019 Bill. This will be an interpretive provision; amendments will be needed to bring the rule in line with the 2019 Bill.

Subitem 55(3) of Schedule 3 to this Bill provides that this item will not prevent the tariff rate quota rules from being amended or repealed after the commencement of the item. This will ensure that the rules can be amended or repealed when necessary for the establishment and administration in place to deal with tariff rate quotas for the export of goods.

Part 9—Powers and officials

Division 1—Audits

Item 56 Audit required before commencement time but not commenced before that time

Subitem 56(1) of Schedule 3 to this Bill will provide an application provision for item 56. Item 56 will apply if the Secretary had, under an old Export Control Order, required an audit of operations, or any other matter, related to a kind of prescribed goods to be conducted but the audit had not commenced before the commencement time.
Subitem 56(2) of Schedule 3 to this Bill will provide that in these circumstances, the requirement for the audit to be conducted is taken to have been made under subclause 266(1) or 267(1) of the 2019 Bill. Subclause 266(1) of the 2019 Bill will provide that the Secretary may require an audit of export operations. Subclause 267(1) of the 2019 Bill will provide that the Secretary may require an audit in relation to persons performing functions or exercising powers under the 2019 Bill.

This provision will enable a smooth transition to the 2019 Bill and will mean the Secretary will not have to issue a new notice requiring an audit. As the audit will now be an audit under the 2019 Bill, all the provisions relating to audits (such as the power and obligations of an auditor) will apply.

**Item 57 Audit in progress etc. immediately before commencement time**

Subitem 57(1) of Schedule 3 to this Bill will provide an application provision for item 57. Item 57 will apply if:

(a) the Secretary had, under an old Export Control Order, required an audit of operations, or of any other matter, related to a kind of goods to be conducted; and

(b) either:

(i) the audit had commenced before the commencement time but had not been completed before that time; or

(ii) the audit had been completed before the commencement time but the process to be followed after the completion of the audit had not been completed before the commencement time.

Subitem 57(2) of Schedule 3 to this Bill will be a saving provision such that in the circumstances described in subitem 57(1), the provisions of the old Export Control Order in relation to audits, and if applicable, the process to be followed after its completion, will continue to apply. By saving the old law, neither the department nor the person subject to the audit gain any new powers, rights or obligations that may exist under the 2019 Bill. The relevant provisions of the old law continue to apply to audits commenced before the commencement time.

**Item 58 Approved auditors**

Subitem 58(1) of Schedule 3 to this Bill will provide an application provision for item 58. Item 58 will apply if:

(a) the person was approved as an auditor to conduct audits of operations, or any other matter, related to a kind of goods under an old Export Control Order; and

(b) the approval was in force immediately before the commencement time.

Subitem 58(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 58(1), the person will continue to be an approved auditor after the commencement time as if they were approved under subclause 273(1) of the 2019 Bill. Subclause 273(1) of the 2019 Bill will provide that the Secretary may approve persons to be auditors. In addition, subitem 58(3) will provide that if the approval under the old Export Control Law was subject to conditions, those conditions will continue to apply after the commencement time.

Subitem 58(4) will provide the period of effect of the approval. The approval will continue in force until the end of the period specified in the approval issued under the old Export Control Order, unless it is revoked earlier under the rules made for the purposes of subclauses 273(6).
and (7) of the 2019 Bill. Subclauses 273(6) and (7) of the 2019 Bill will provide for rules that may be made by the Secretary in relation to matters relating to the approval of persons to conduct audits.

**Division 2—Verification in relation to compliance**

**Item 59** Compliance verifications performed before commencement time may be taken into account after that time

Subitem 59(1) of Schedule 3 to this Bill will provide an application provision for item 59. Item 59 will apply if:

(a) a person had made a written verification, or given a written verification to the Secretary, under an old Export Control Order that:
   (i) the requirements of the 1982 Act and the old Export Control Order that applied in relation to the goods had been complied with; and
   (ii) importing country requirements relating to the goods had been met; and

(b) a government certificate had not been issued in relation to the goods, or an export permit had not been given for the goods, before the commencement time.

Subitem 59(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 59(1), the verification may be taken into account in relation to issuing a government certificate or export permit under the 2019 Bill. The concept of verification will be replaced by the concept of assessment under the 2019 Bill. However, this provision will mean a person will not need to have a new assessment carried out after the commencement time.

**Division 3 – Powers of the Secretary**

**Item 60** Notice requiring information or documents given before commencement time

Item 60 of Schedule 3 to this Bill will deal with certain notices issued under subsection 11Q(1) of the 1982 Act and subsection 51(1) of old Part 2 of the AMLI Act. Item 60 will preserve the effect of these notices if they were issued before the commencement time and had not been complied with before the commencement time. Item 60 will provide that these notices continue to have effect after the commencement time as if they had been issued under subclause 285(1) of the 2019 Bill.

Item 60 will enable a smooth transition to the 2019 Bill and will mean the Secretary will not have to issue a new notice for the relevant matters. It will also mean that the person subject to the notices will not have any additional time within which to comply with the notices. Clause 285 of the 2019 Bill will provide both a fault-based offence and a civil penalty provision for failing to provide the information or documents. These measures are essential to ensure compliance with notices and preserve the integrity of Australia’s exports.
Item 60 of Schedule 3 to this Bill will provide that if the Secretary had given a written notice to a person under subsection 11Q(1) of the 1982 Act or under subsection 51(1) of old Part 2 of the AMLI Act to provide information or documents, and the period within which the person had to comply with the notice had not ended before the commencement time, and the person had not complied with the notice before the commencement time, the notice will continue to apply after commencement time as if it were a notice given under subclause 285(1) of the 2019 Bill. Subclause 285(1) of the 2019 Bill will enable the Secretary to require information or documents.

**Item 61  Delegation and subdelegation of Secretary’s functions and powers under this Act**

Subitem 61(1) of Schedule 3 to this Bill will provide that clause 288 of the 2019 Bill (which will relate to delegations and subdelegations) will apply to the Secretary’s powers and functions under this Bill. Most of the powers and functions set out in this Bill will be exercised under the 2019 Bill and not under this Bill, as the provisions in this Bill provide for transition to the 2019 Bill. However, there are some functions and powers in this Bill that can be exercised by the Secretary. For example, subitem 16(2) of this Bill, which relates to the Secretary being able to vary documents or records relating to accreditation to replace references to the old laws. Subitem 61(1) of this Bill will enable the Secretary to delegate those functions and powers in accordance with clause 288 of the 2019 Bill.

However, similar to the 2019 Bill, subitem 61(2) of Schedule 3 to this Bill will provide limitations on the Secretary’s power to delegate and the delegate’s power to subdelegate. The Secretary will not be able to delegate the rule making power set out in item 92 of Schedule 3 to this Bill and a delegate will not be able to subdelegate the function under item 89 of Schedule 3 to this Bill (which will relate to reports to Parliament about live-stock). Maintaining these powers at the Secretary and SES level reflects the significance of these powers.

**Item 62  Directions given before commencement time**

Subitem 62(1) of Schedule 3 to this Bill will provide an application provision for item 62. Item 62 will apply if the Secretary or an authorised officer had given a direction to a person under an old Export Control Order before the commencement time and the direction had not been complied with before commencement time.

Subitem 62(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 62(1) the person must comply with the direction. A person will commit a fault-based offence if the person is given a direction under an old Export Control Order and the person does not comply with the direction. The fault based offence will be subject to a fine of 50 penalty units. The maximum fine for a body corporate for a contravention will be 250 penalty units. This will be a fault based offence with the Criminal Code operating to apply the default fault elements. This penalty is consistent with penalties in an old Export Control Order (for example, see order 78 of the Export Control (Meat and Meat Products) Orders 2005).

The penalties for the fault-based offence reflect the seriousness of failing to comply with a direction of the Secretary or an authorised officer in relation to export operations and goods that were covered by an old Export Control Order. Conduct that contravenes the requirements that will be set out in this provision may undermine the integrity of the regulatory framework provided for by the 2019 Bill. This conduct may impact on the confidence of trading partners in the Government’s regulation of exported goods and adversely impact on market access.
The consequence of non-compliant behaviour by one person may therefore impact on the ability of others to export goods.

**Division 4—Authorised officers**

**Item 63** Authorised officers (other than third party authorised officers) under old Export Control Act

Subitem 63(1) of Schedule 3 to this Bill will provide an application provision for item 63. Item 63 will apply in relation to a person who was appointed to be an authorised officer, or persons included in a class of persons who were appointed to be authorised officers, under section 20 of the 1982 Act if:

(a) the person, or each person included in the class of persons, was an officer or employee of a Commonwealth body or a State or Territory body; and
(b) the appointment was in force immediately before the commencement time.

Subitem 63(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 63(1) each person, at the commencement time, will be taken to be an authorised officer under subclause 291(1) of the 2019 Bill. In addition, subitem 63(3) will continue the effect of an instrument of appointment under section 20 of the 1982 Act. The instrument will transition to be an instrument of authorisation under subclause 291(1) of the 2019 Bill.

Subitem 63(4) of Schedule 3 to this Bill will be an interpretative provision that will transition functions and powers. Where there are similar functions and powers set out in the 2019 Bill (or rules made under the 2019 Bill) to the functions and powers that the person was authorised to perform or exercise as an authorised officer under the 1982 Act, old Export Control Regulations or an old Export Control Order, the instrument of authorisation (which will now be taken to be an instrument of authorisation under the 2019 Bill) will be taken to specify the similar functions and powers in the 2019 Bill (or rules made thereunder).

For subitems 63(2), (3) and (4) of Schedule 3 to this Bill to operate, there must be a valid instrument of appointment under section 20 of the 1982 Act that clearly identifies the person or class of persons and which specifies the functions and powers in accordance with that section.

In addition to subitem 63(4), subitem 63(5) of Schedule 3 to this Bill will enable the Secretary to vary the instrument of authorisation to replace a reference to an old Export Control Law or a provision of an old Export Control Law with a reference to the 2019 Bill (or rules made under the 2019 Bill). This will assist with transitioning authorised officers without the requirement for new instruments of authorisation. In addition, this provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill, and will support the transition to the 2019 Bill.

**Item 64** Third party authorised officers under old Export Control Act

Subitem 64(1) of Schedule 3 to this Bill will provide an application provision for item 64. Item 64 will apply in relation to a person who was appointed to be an authorised officer, or persons included in a class of persons who were appointed to be authorised officers, under section 20 of the old Export Control Act if:

(a) the person, or each person included in the class of persons, was not an officer or employee of a Commonwealth body or a State or Territory body; and
(b) the appointment was in force immediately before the commencement time.
Subitem 64(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 64(1) each person will be taken to be an authorised officer under paragraph 291(6)(a) of the 2019 Bill. In addition, subitem 64(3) will continue the effect of an instrument of appointment under section 20 of the 1982 Act. The instrument will transition to be an instrument of authorisation under paragraph 291(6)(a) of the 2019 Bill.

Subitem 64(4) of Schedule 3 to this Bill will be an interpretative provision that will transition functions and powers. Where there are similar functions and powers set out in the 2019 Bill (or rules made thereunder) to the functions and powers that the person was authorised to perform under the 1982 Act, old Export Control Regulations or an old Export Control Order, the instrument of authorisation (which will now be taken to be an instrument of authorisation under the 2019 Bill) will be taken to specify the similar functions and powers in the 2019 Bill (or rules made thereunder).

For subitems 64(2), (3) and (4) of Schedule 3 to this Bill to operate, there must be a valid instrument of appointment under section 20 of the 1982 Act that clearly identifies the person or class of persons and which specifies the functions and powers in accordance with that section.

In addition to subitem 64(4), subitem 64(5) of Schedule 3 to this Bill will enable the Secretary to vary the instrument of authorisation to replace a reference to an old Export Control Law or a provision of an old Export Control Law with a reference to the 2019 Bill (or rules made thereunder). This will assist with transitioning authorised officers without the requirement for new instruments of authorisation. In addition, this provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill, and will support the transition to the 2019 Bill.

**Item 65 Authorised officers under old Part 2 of the AMLI Act**

Item 65 of Schedule 3 to this Bill will provide a similar provision to items 63 and 64 but in relation to authorised officers appointed under old Part 2 of the AMLI Act.

Subitem 65(1) of Schedule 3 to this Bill will provide an application provision for item 65. Item 65 will apply in relation to a person who was appointed to be an authorised officer, or a class of persons who were appointed to be authorised officers, under subsection 49(1) of old Part 2 of the AMLI Act if:

(a) the person, or each person included in the class of persons, was an officer or employee of a Commonwealth body or a State or Territory body; and

(b) the appointment was in force immediately before the commencement time.

Subitem 65(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 65(1) each person will be taken to be an authorised officer under subclause 291(1) of the 2019 Bill. In addition, subitem 65(3) will continue the effect of an instrument of appointment under subsection 49(1) of old Part 2 of the AMLI Act. The instrument will transition to be an instrument of authorisation under subclause 291(1) of the 2019 Bill.

Subitem 65(4) of Schedule 3 to this Bill will provide that the instrument of authorisation is taken to specify the functions and powers conferred on an authorised officer by Parts 2 and 3, and Division 2 of Part 11 of Chapter 10 of the 2019 Bill. This will be limited to the compliance and enforcement powers under the 2019 Bill as they are the only powers that an authorised officer has under the old AMLI Act.

For subitems 65(2), (3) and (4) of Schedule 3 to this Bill to operate, there must be a valid instrument of appointment under subsection 49(1) of the old AMLI Act that clearly identifies
the person or class of persons and which specifies the functions and powers in accordance with that section.

Subitem 65(5) of Schedule 3 to this Bill will enable the Secretary to vary the instrument of authorisation to replace a reference to an old Export Control Law or a provision of an old Export Control Law with a reference to the 2019 Bill (or rules made under the 2019 Bill). This will assist with transitioning authorised officers without the requirement for new instruments of authorisation. In addition, this provision will complement the interpretative provision set out in item 3 of Schedule 3 to this Bill, and will support the transition to the 2019 Bill.

**Item 66 Directions to take action given by authorised officer before commencement time**

Subitem 66(1) of Schedule 3 to this Bill will be an application provision for item 66. Item 66 will apply if:

(a) an authorised officer had given a direction under old Export Control Regulations or an old Export Control Order requiring the manager of an accredited property, the occupier of a registered establishment, the holder of an approved arrangement, the holder of an export licence or the holder of an export permit to take specified action in relation to a kind of prescribed goods; and

(b) the direction had not been complied with, or had not been fully complied with, before the commencement time.

Subitem 66(2) of Schedule 3 to this Bill will provide that in the circumstances described by subitem 66(1), the direction will continue in force after the commencement time as if it were a direction given to the relevant person under subclause 305(1) of the 2019 Bill (which will deal with directions to deal with non-compliance with the requirements of the 2019 Bill etc.). Subclause 305(5) of the 2019 Bill will provide a civil penalty for failing to comply with a direction given under subclause 305(1). Item 66 will preserve the effect of notices issued before the commencement time if those notices had not been complied with before the commencement time. These measures are essential to ensure compliance with directions given before commencement and preserve the integrity of Australia’s exports.

**Item 67 Identity cards**

Subitem 67(1) and (2) of Schedule 3 to this Bill will provide a transitional arrangement for identity cards issued to authorised officers under subsection 21(1) of the 1982 Act and under subsection 49(2) of old Part 2 of the AMLI Act.

If these identity cards were in the possession of the authorised officer immediately before the commencement time, the identity card will be taken after the commencement time:

(a) to have been issued to the authorised officer under subclause 306(1) of the 2019 Bill; and

(b) to comply with subclause 306(2) of the 2019 Bill.

This provision will prevent the administrative burden and expense of having to issue new identity cards following the commencement of the 2019 Bill.

**Division 5—Approved export programs**

**Item 68 Costs of authorised officers in relation to approved export programs**
Subitem 68(1) of Schedule 3 to this Bill will be an application provision for item 68. Item 68 will apply if, immediately before the commencement time, an exporter was liable to pay the reasonable costs of any activities undertaken by an authorised officer under section 9D or 9E of the 1982 Act in relation to an approved export program.

Subitem 68(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 68(1), the 2019 Bill will apply in relation to the amount payable as if:

(a) the amount were a cost-recovery charge; and
(b) rules made for the purposes of clause 400 of the 2019 Bill (which will deal with paying cost-recovery charges) prescribed that the time when the amount is due and payable is when a demand for payment of the amount is made; and
(c) the person liable to pay the amount were the exporter.

This provision will transition the liability of the exporter for cost-recovery charges, which will otherwise fall on the repeal of the 1982 Act.

Item 69 Directions to authorised officers to undertake approved export program activities

Item 69 of Schedule 3 to this Bill will provide that a direction that was in force under subsection 9D(1) of the 1982 Act (which deals with authorised officers undertaking certain approved export program activities) immediately before the commencement time, will continue in force after the commencement time as if it were a direction given under subclause 313(1) of the 2019 Bill. This transitional provision will remove the necessity of issuing a new direction and provide continuity in relation to approved export programs.

Item 70 Directions to authorised officers to monitor, review or audit approved export program activities

Item 70 of Schedule 3 to this Bill will deal with a direction to monitor, review or audit a matter that was in force under subsection 9E(1) of the 1982 Act, which enables the Secretary to direct an authorised officer to monitor, review or audit the undertaking by accredited veterinarians of the activities in an approved export program. Item 70 provides that if this direction was in force immediately before the commencement time, it will continue in force after the commencement time as if it were a direction given under subclause 314(1) of the 2019 Bill (which will provide that the Secretary may direct an authorised officer to monitor or review export operations in approved export programs). Item 70 will transition the direction as if it were to monitor or review the corresponding matter referred to in paragraph 314(1)(a) or (b) of the 2019 Bill. This transitional provision will remove the necessity of issuing a new direction and provide continuity in relation to approved export programs.

Item 71 Directions to accredited veterinarian to remedy deficiency in undertaking approved export program

Item 71 of Schedule 3 to this Bill will deal with a direction that was in force under subsection 9E(2) of the 1982 Act and complied with subsection 9E(3) of the 1982 Act before the commencement time. Subsection 9E(2) provides for the Secretary to give a direction to monitor, review or audit the undertaking by accredited veterinarians of the activities in an approved export program. Subsection 9E(2) also provides that if the authorised officer identifies a deficiency, the authorised officer may direct the accredited veterinarian to remedy the defect. If this direction to remedy the defect is in force immediately before the commencement time, item 71 will provide that this direction will continue in force after the
commencement time as if it were a direction given under subclause 314(2) of the 2019 Bill (which will provide that the Secretary may direct an authorised officer to monitor or review export operations in approved export programs and an authorised officer may direct an accredited veterinarian to remedy a deficiency). Item 71 will also provide that the direction complies with subclause 314(3) of the 2019 Bill (which will provide what the direction must specify).

An accredited veterinarian will commit a strict liability offence if the veterinarian fails to comply with a direction with a maximum 50 penalty unit penalty (see clause 317 of the 2019 Bill). This will be consistent with the penalty in the 1982 Act (see section 9H of that Act).

This transitional provision will remove the necessity of issuing a new direction and provide continuity in relation to approved export programs. This measure is essential to ensure compliance with directions given before commencement and to preserve the integrity of Australia’s exports.

**Part 10—Compliance and enforcement**

Part 10 of Schedule 3 to this Bill will provide that the compliance and enforcement measures in Chapter 10 of the 2019 Bill will apply for the purposes of monitoring and investigating compliance with this Bill or an old Export Control Law. This will allow authorised officers to, for example, access warrants (both monitoring and offence-related) and seize evidential material, ensuring that any compliance and enforcement activities can continue despite the repeal of an old Export Control Law.

**Item 72 Monitoring compliance with and investigation of offences etc. against old Export Control Law**

*Application of Chapter 10 of the new Export Control Act*

Subitem 72(1) of Schedule 3 to this Bill will set out the circumstances in which certain monitoring and investigation powers may be used. Item 72 will provide (subject to any modification set out in subitems 72(2) and 72(3)) that the powers may be used:

(a) for the purpose of determining:
   (i) whether this Bill or an old Export Control Law has been, or is being, complied with; or
   (ii) whether information provided for the purposes of this Bill or an old Export Control Law is correct; or

(b) if an authorised officer suspects on reasonable grounds that there may be on any premises:
   (i) a thing with respect to which an offence against this Bill or an old Export Control Law has been committed or is suspected, on reasonable grounds, to have been committed, or a civil penalty provision of this Bill has been contravened or is suspected, on reasonable grounds, to have been contravened; or
   (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of an offence against this Bill or an old Export Control Law, or evidence as to the contravention of a civil penalty provision of this Bill; or
(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing an offence against this Bill or an old Export Control Law, or for the purpose of contravening a civil penalty provision of this Act.

In these circumstances 72(1), will enable an authorised officer (which will be limited to Commonwealth or State or Territory authorised officers (see Part 1 of Chapter 10 of the 2019 Bill)) to:

- monitor whether an old Export Control Law or this Bill has been, or is being, complied with or whether information given in compliance or purported compliance with this Bill is correct (Part 2 of Chapter 10 of the 2019 Bill);
- investigate whether an old Export Control Law or this Bill has been, or is being, complied with (Part 3 of Chapter 10 of the 2019 Bill);
- enter adjacent premises to monitor or investigate whether an old Export Control Law or this Bill has been, or is being, complied with (Part 4 of Chapter 10 of the 2019 Bill);
- enter and exercise powers on premises without a warrant or consent (Part 5 of Chapter 10 of the 2019 Bill); and
- exercise powers in emergency situations (Part 6 of Chapter 10 of the 2019 Bill).

Subitem 72(1), will enable an authorised officer (which will be limited to Commonwealth or State or Territory authorised officers (see Part 1 of Chapter 10 of the 2019 Bill)) to:

- monitor whether an old Export Control Law or this Bill has been, or is being, complied with or whether information given in compliance or purported compliance with this Bill is correct (Part 2 of Chapter 10 of the 2019 Bill);
- investigate whether an old Export Control Law or this Bill has been, or is being, complied with (Part 3 of Chapter 10 of the 2019 Bill);
- enter adjacent premises to monitor or investigate whether an old Export Control Law or this Bill has been, or is being, complied with (Part 4 of Chapter 10 of the 2019 Bill);
- enter and exercise powers on premises without a warrant or consent (Part 5 of Chapter 10 of the 2019 Bill); and
- exercise powers in emergency situations (Part 6 of Chapter 10 of the 2019 Bill).

Subitem 72(1) will also apply to persons assisting authorised officers (see Division 2 of Part 11 of Chapter 10 of the 2019 Bill).

Subitem 72(2) of Schedule 3 to this Bill will be an interpretive provision which will modify the provisions in Chapter 10 of the 2019 Bill so that they may be used to monitor and investigate offences and contraventions of civil penalty provisions under this Bill or an old Export Control Law. Paragraph 72(2)(a) will provide that the provisions in the 2019 Bill referred to in subitem 72(1) will apply as if in those provisions, the expression “this Act” includes a reference to this Bill and each old Export Control Law. Paragraph 72(2)(b) will provide that “relevant premises” for the purposes of Part 5 of Chapter 10 of the 2019 Bill will be premises that were registered premises or a registered establishment under an old Export Control Order; or a property that was an accredited property under an old Export Control Order.

A note will be inserted after subitem 72(2) to advise the reader that applying the provisions of the 2019 Bill referred to in subitem 72(1) and as described in subitem 72(2), will have the effect of applying Parts 2 (monitoring) and 3 (investigation) of the Regulatory Powers Act in
relation to this Bill and each old Export Control Law. Item 72 will prevent having to repeat those provisions in this Bill.

Additional power for monitoring compliance with old Part 2 of the AMLI Act

Subitem 72(3) of Schedule 3 to this Bill will provide an additional power to stop and detain a conveyance that an authorised officer suspects on reasonable grounds contains meat or live-stock, or records relating to meat or live-stock. This power will be taken to be an additional monitoring power for the purposes of determining, under Part 2 of the Regulatory Powers Act as it will apply under this item (see subitems 72(1) and (2)):

(a) whether old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order has been complied with; or
(b) whether information provided for the purposes of old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order is correct.

This item will be necessary to ensure that the monitoring power that authorised officers have under old Part 2 of the AMLI Act will be able to continue to apply for monitoring compliance with old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order. It will also ensure that an authorised officer will be able to have the power to monitor whether information provided for the purposes of old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order is correct. This additional monitoring power is essential to ensure the integrity of Australia’s exports of meat and live-stock and to apply a consistent approach to compliance and enforcement under this Bill.

Civil Penalties

Subitem 72(4) of Schedule 3 to this Bill will provide that Part 7 of Chapter 10 of the 2019 Bill and any related provisions will apply in relation to the contraventions of civil penalty provisions of this Bill, as if in Part 7, the expression “this Act” includes a reference to this Bill. A note will be inserted after subitem 72(4) to advise that applying Part 7 of Chapter 10 of the 2019 Bill as described in subitem 72(4) will also apply Part 4 of the Regulatory Powers Act in relation to civil penalty provisions of this Bill. This will mean that civil penalty orders will be able to be sought under Part 4 of the Regulatory Powers Act from a relevant court in relation to contraventions of civil penalty provisions in this Bill.

References to Chapter 10 of the new Export Control Act

Subitem 72(5) of Schedule 3 to this Bill will clarify that a reference to Chapter 10 of the 2019 Bill, as it will apply under this item, is to be read as that Chapter with the modifications that are provided by this item.

Item 73 Warrants in force under old Export Control Law immediately before commencement time

Monitoring warrants

Subitem 73(1) of Schedule 3 to this Bill will provide that if a warrant that was issued under section 10B of the 1982 Act (which deals with monitoring warrants) was in force immediately before the commencement time, the warrant will continue in force after that time as if it were a monitoring warrant within the meaning of the 2019 Bill. This will enable continuity in the exercise of monitoring powers and will prevent having to apply for a new monitoring warrant after the commencement time. There will be no requirement to refer to monitoring warrants issued under old Part 2 of the AMLI Act as there are no monitoring warrants under that Act.
Subitem 73(2) of Schedule 3 to this Bill will modify the operation of the Regulatory Powers Act as it will apply under item 72 of Schedule 3 to this Bill. Subitem 73(2) will provide that paragraph 32(4)(f) of the Regulatory Powers Act (which deals with when a monitoring warrant ceases to be in force), will not apply in relation to a warrant referred to in subitem 73(1). This provision will be necessary to continue to provide for the maximum six month period that a monitoring warrant may be in effect under paragraph 10B(4)(c) of the 1982 Act rather than applying paragraph 32(4)(f) of the Regulatory Powers Act which provides that a monitoring warrant is in force for a period that is up to three months after it is issued.

**Offence-related warrants**

Subitem 73(3) of Schedule 3 to this Bill will provide that if a warrant that was issued under section 10E of the 1982 Act, or section 37 of old Part 2 of the AMLI Act (both of which deal with offence-related warrants), was in force immediately before the commencement time, the warrant will continue in force after that time as if it were an investigation warrant referred to in paragraph (a) or (b) (as the case requires) of the definition of investigation warrant in clause 12 of the 2019 Bill.

Clause 12 of the 2019 Bill will define an investigation warrant as meaning:

(a) a warrant issued under section 70 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subclause 329(1) of the 2019 Bill; or

(b) a warrant signed by an issuing officer under section 71 of the Regulatory Powers Act as it applies in relation to evidential material that relates to a provision mentioned in subclause 329(1) of the 2019 Bill.

Subitem 73(4) of Schedule 3 to this Bill will modify the operation of the Regulatory Powers Act as it will apply under item 72 of Schedule 3 to this Bill. Paragraph 70(4)(j) of the Regulatory Powers Act (which deals with when an investigation warrant ceases to be in force), will not apply in relation to a warrant referred to in subitem 73(3). This provision will be necessary to continue to provide for the maximum seven day period that an investigation warrant may be in effect for under paragraph 10E(4)(e) of the 1982 Act and the maximum 14 day period that an investigation warrant may be in force under paragraph 37(4)(f) of the AMLI Act.

**Item 74 Application for warrant made but not decided before commencement time**

**Monitoring warrant**

Subitem 74(1) of Schedule 3 to this Bill will apply if:

(a) an application for a warrant had been made under subsection 10B(1) of the 1982 Act; and

(b) no decision on the application had been made before the commencement time.

Subitem 74(1) will provide that the application will be taken to be made under subsection 32(1) of the Regulatory Powers Act, as that subsection will apply under item 72 of Schedule 3 to this Bill.

This transitional provision will mean a new application for a monitoring warrant will not be needed in relation to applications made but not decided before commencement time.

**Offence-related warrants**
Subitem 74(2) of Schedule of this Bill will apply if:

(a) an application for a warrant had been made under subsection 10E(1) of the 1982 Act or subsection 37(1) of old Part 2 of the AMLI Act; and
(b) no decision on the application had been made before the commencement time.

Subitem 74(2) will provide that the application will be taken to be made under subsection 70(1) of the Regulatory Powers Act, as that subsection will apply under item 72 of Schedule 3 to this Bill.

This transitional provision will mean a new application for an offence-related warrant will not be needed in relation to applications made but not decided before commencement time.

Item 75 Dealing with things seized under old Export Control Act or old Part 2 of the AMLI Act

Subitem 75(1) of Schedule 3 to this Bill will provide an application provision for item 75. Item 75 will apply to a thing if:

(a) it had been seized under Part III of the 1982 Act and was being retained, in accordance with section 11H of that Act, immediately before the commencement time; or
(b) it had been seized under section 34 or 35 of old Part 2 of the AMLI Act and was being retained, in accordance with section 44 of that Act, immediately before the commencement time.

Subitem 75(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 75(1), sections 66 (return of seized things), 67 (issuing officer may permit a thing to be retained) and 68 (disposal of things) of the Regulatory Powers Act apply as if the thing was seized under Part 3 of that Act, as that Part will apply under item 72 of Schedule 3 to this Bill.

Subitem 75(3) of Schedule 3 to this Bill will apply if an order authorising a person to keep a thing was in force under subsection 11J(2) of the 1982 Act, or subsection 45(2) of old Part 2 of the AMLI Act, immediately before the commencement time. Subitem 75(3) will provide that the order will continue in force after the commencement time as if it were an order made under subsection 67(4) of the Regulatory Powers Act, as that subsection will apply under item 72 of Schedule 3 to this Bill. Item 75 will continue the legal right to continue to retain seized things after the commencement time.

Subitem 75(4) of Schedule 3 to this Bill will apply if:

(a) an application for an order that a thing be kept for a further period had been made under subsection 11J(1) of the 1982 Act or subsection 45(1) of old Part 2 of the AMLI Act; and
(b) no decision on the application had been made before the commencement time.

Subitem 75(4) will provide that the application is taken to be an application made under subsection 67(1) of the Regulatory Powers Act, as that subsection will apply under item 72 of Schedule 3 to this Bill. These provisions in the Regulatory Powers Act set out the circumstances, in which applications to retain a seized thing may be made.
**Item 76**  
**Premises entered under old Export Control Law before commencement time—requirement to give information or produce documents**

Subitem 76(1) of Schedule 3 to this Bill will provide an application provision for item 76. Item 76 will apply if:

(a) an authorised officer had, under subsection 11P(1) of the 1982 Act, or subsection 47(1) of old Part 2 of the AMLI Act, required a person to give information to the officer or produce documents referred to by the officer; and

(b) the requirement had not been complied with before the commencement time.

Subitem 76(2) will provide that in the circumstances described in subitem 76(1), the requirement will continue to have effect after the commencement time as if it were a requirement under subsection 24(3) of the Regulatory Powers Act, as that subsection applies under item 72 of Schedule 3 to this Bill.

Subsection 24(3) of the Regulatory Powers Act will provide that if the entry to premises is authorised by a monitoring warrant, the authorised person may require any person on the premises to answer any questions, and produce any document, relating to:

(a) the operation of the provisions; or

(b) the information.

Item 76 will have the effect of continuing a requirement to provide information or documents after the commencement time where that requirement existed before the commencement time.

**Item 77**  
**Indictable offences under old Export Control Act**

Item 77 of Schedule 3 to this Bill will provide that despite the repeal of the 1982 Act, section 17 of the 1982 Act will continue to apply in relation to proceedings in respect of an offence against section 7A, 8, 9, 14 or 15 of the 1982 Act that were not finally determined before the commencement time or that are instituted after that time.

This will be a procedural provision that will ensure that the manner in which offences were dealt with before the commencement time will continue to apply after the commencement time. This will ensure that no-one is disadvantaged by any change in the processing of offences.

**Part 11—Miscellaneous**

**Division 1—Review of decisions**

**Item 78**  
**Review of decisions made under old Export Control Order**

Item 78 of Schedule 3 to this Bill will provide that despite the repeal of the 1982 Act, the provisions of an old Export Control Order that deals with the review of decisions (both reconsideration by the Secretary of the initial decision and review of decisions by the Administrative Appeals Tribunal) will continue to apply in relation to:

(a) an initial decision that was made before the commencement time; and

(b) a decision by the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

A note will be inserted after item 78 to provide examples of decisions made under orders. The examples are Part 16 of the Export Control (Prescribed Goods—General) Order 2005, Divisions I and II of Part 10 of the Export Control (Meat and Meat Products) Orders 2005.
and old Export Control Orders dealing with tariff rate quotas (as those Orders were in force immediately before the commencement time).

This will ensure that people who are affected by a reviewable decision before the commencement time will be able to continue to seek review under the law that existed at the time the decision was made.

This item will not apply to decisions which are taken to be made under the 2019 Bill. These decisions will be reviewable, where applicable, under Part 2 of Chapter 11 of the 2019 Bill.

Division 2—Confidentiality of information

Item 79 Confidentiality of information obtained under, or in accordance with, old Export Control Law

Subitem 79(1) of Schedule 3 to this Bill will provide that information obtained under, or in accordance with, or in performing functions or exercising powers under an old Export Control Law is taken to be protected information for the purposes of the 2019 Bill.

A note will be inserted after subitem 79(1) to advise the reader that Part 3 of Chapter 11 of the 2019 Bill (which will deal with confidentiality of information and the way information may be used or disclosed) will apply in relation to the information.

Subitem 79(2) of Schedule 3 to this Bill will provide that clause 391 of the 2019 Bill (which will deal with authorisation to use or disclose sensitive information or certain other protected information for secondary permissible purposes) will have effect as if it also applied in relation to information obtained by a person in performing functions or exercising powers under Part III of the 1982 Act (which deals with enforcement) or old Part 2 of the AMLI Act (which deals with the control of meat and live-stock exports).

This provision will ensure that information obtained before commencement will be able to be treated as sensitive information or other protected information under the 2019 Bill so as to protect a person’s privacy.

Division 3—Cost recovery

Item 80 Fees required to be paid before commencement time

Item 80 of Schedule 3 to this Bill will provide that the 2019 Bill will apply as if:

(a) the following were cost-recovery charges:

(i) fees required to be paid by the Export Control (Fees) Order 2015 (as in force immediately before the commencement time);

(ii) late payment fees required to be paid by the Export Control (Fees) Order 2015 (as in force immediately before the commencement time);

(iii) late payment fees prescribed by regulations made for the purposes of subsection 11(1) of the Export Charges (Collection) Act 2015 (as in force immediately before the commencement time); and

(b) rules made for the purposes of clause 400 of the 2019 Bill prescribed that the time when a fee described in subparagraph (a)(i) is due and payable is when a demand for payment of the fee is made; and
Item 80 will outline how fees will transition to be dealt with under the 2019 Bill. Item 80 will also provide that unpaid fees at the commencement time will be due and payable under the 2019 Bill. Item 80 will ensure that unpaid fees can be recovered despite the repeal of the 1982 Act and the Export Charges (Collection) Act 2015. The recovery of these fees will be consistent with the Australian Government Cost Recovery Guidelines.

A note will be inserted after paragraph 80(e) which will advise the reader that Division 4 of Part 4 of Chapter 11 of the 2019 Bill will provide for the recovery of cost-recovery charges. Clause 403 of the 2019 Bill will allow rules to specify a late payment fee that is due and payable if a cost-recovery charge is not paid at or before the time prescribed by the rules as the time the cost-recovery charge is due and payable.

Item 81 Export control charges imposed before commencement time

Item 81 of Schedule 3 to this Bill will provide a savings provision and provide that despite the repeal by Schedule 1 to this Bill of the Export Charges (Collection) Act 2015, the Export Charges (Collection) Act 2015 will continue to apply in relation to the collection of export charges imposed before the commencement time. This ensures that any charges imposed under the Export Charges (Collection) Act 2015 will be able to be recovered after the commencement time.

Item 82 Export inspection charges imposed before commencement time

Item 82 of Schedule 3 to this Bill will provide a savings provision in relation the repeal of certain legislation.

Item 82 will provide that despite the repeals by Schedule 1 to this Bill of the Export Inspection Charges Collection Act 1985, the Export Inspection (Establishment Registration Charges) Act 1985, the Export Inspection (Quantity Charge) Act 1985, and the Export Inspection (Service Charge) Act 1985, the respective pieces of legislation will continue to apply in relation to a charge imposed before the commencement time. This ensures that any charges imposed under this legislation will be able to be recovered after the commencement time.
Division 4—Records

Item 83  Records required to be retained before commencement time

Subitem 83(1) of Schedule 3 to this Bill will provide an application provision for item 83. Item 83 will apply if a person was required to retain a record under an old Export Control Law if the retention period for that record had not ended before the commencement time.

Subitem 83(2) of Schedule 3 to this Bill will provide that subclause 408(3) of the 2019 Bill (which will deal with the requirement to retain records) applies after the commencement time in relation to the record as if the requirement to retain the record were provided by rules made for the purposes of subclause 408(1) or (2) of that Bill. This provision will ensure that any obligation to retain records will continue to apply with the repeal of an old Export Control Law.

Division 5—Analysts and samples

Item 84  Laboratories and other analysts under old Export Control Order or old Part 2 of the AMLI Act

Persons or bodies permitted to conduct analysis for the purposes of old Export Control Order

Subitem 84(1) of Schedule 3 to this Bill will provide that if a person or body (including a laboratory) that, immediately before the commencement time, was permitted to analyse, inspect or examine a sample of goods or any other thing for the purposes of an old Export Control Order will be taken, at the commencement time, to have been appointed by the Secretary, under subclause 413(1) of the 2019 Bill, to be an analyst for the purposes of the 2019 Bill.

Analysts appointed under old Part 2 of the AMLI Act

Subitem 84(2) of Schedule 3 to this Bill will apply if:

(a) a person had been appointed, under subsection 53(1) of old Part 2 of the AMLI Act, to be an analyst for the purposes of that Part; and

(b) the appointment was in force immediately before the commencement time.

Subitem 84(2) will provide that the person is taken, at the commencement time, to have been appointed by the Secretary, under subclause 413(1) of the 2019 Bill, to be an analyst for the purposes of the 2019 Bill.

Item 84 will ensure that analysts permitted to analyse, inspect or examine a sample of goods or any other thing under an old Export Control Order or the AMLI Act, whose appointment is in force immediately before commencement time, will be analysts appointed under subclause 413(1) of the 2019 Bill. This ensures that these analysts can continue to analyse goods for the purposes of the 2019 Bill.

Item 85  Certificates of analysis given under old Export Control Law

Item 85 of Schedule 3 to this Bill will provide a transition from the existing legislation to the 2019 Bill so that the provisions of the 2019 Bill that deal with certificates of analysis may apply to certificates given under a repealed law. The certificate will continue to have effect in proceedings that had been instituted, but had not been finally determined, before the commencement time, or proceedings that had not been instituted before commencement time.
This will enable these previously issued certificates to be used so samples do not need to be reanalysed. This is essential as previously analysed samples may not be suitable for reanalysis.

The purpose of an analyst’s certificate is to document the result of an analysis so that it can be used as evidence if any issue related to the analysis is considered by a court. The certificate is admissible in any proceedings in relation to a contravention of the 2019 Bill as *prima facie* evidence of the matters stated in the certificate.

**Certificates given under old Export Control Order**

Subitem 85(1) of Schedule 3 to this Bill will provide an application provision for item 85. Item 85 will apply if:

(a) before the commencement time, an authorised officer or a person at a laboratory:

(i) had analysed goods or another thing in relation to which an offence against the 1982 Act, old Export Control Regulations or an old Export Control Order, was or is alleged to have been committed; and

(ii) had given a certificate in respect of the analysis; and

(b) proceedings for the offence:

(i) had been instituted, but had not been finally determined, before the commencement time; or

(ii) had not been instituted before the commencement time.

Subitem 85(2) of Schedule 3 to this Bill will provide that in the circumstances described by subitem 85(1), the 2019 Bill (which will deal with the admission of analysts certificates in proceedings) will apply in relation to the certificate and the proceedings for the offence as if:

(a) the certificate had been given under clause 414 of the 2019 Bill (which will provide that an analyst may give a certificate); and

(b) a reference in clause 415 of the 2019 Bill to “this Act” included a reference to the 1982 Act, old Export Control Regulations or old Export Control Order; and

(c) in subclause 415(2) of the 2019 Bill, the words “At least 14 days before” were omitted and the word “Before” were substituted.

**Certificates given under old Part 2 of the AMLI Act**

Similar to subitems 85(1) and (2), subitems 85(3) and (4) of Schedule 3 to this Bill will provide a means for transitioning certificates of analysis issued under old Part 2 of the AMLI Act.

**Item 86  Certificates of analysis given under new Export Control Act in relation to offence alleged to have been committed before commencement time**

**Alleged offences against old Export Control Act etc.**

Subitems 86(1) and (2) of Schedule 3 to this Bill will deal with the transition of certificates of analysis in relation to alleged offences against the 1982 Act, old Export Control Regulations or an old Export Control Order (old Export Control laws) to the 2019 Bill.

Subitem 86(1) of Schedule 3 to this Bill will provide that the 2019 Bill will apply in relation to goods or another thing in relation to which an offence against the old Export Control laws is or was alleged to have been committed before the commencement time, as if a reference in
clause 414 of the 2019 Bill to “this Act” included a reference to the 1982 Act, old Export Control Regulations or old Export Control Order. This means that analysts may give a certificate under the 2019 Bill in relation to an offence that was alleged to have been committed before the commencement time.

Subitem 86(2) of Schedule 3 to this Bill will modify clause 415 of the 2019 Bill (admission of analyst’s certificate in proceedings) so that it may apply in relation to proceedings for offences that are alleged to have been committed before the commencement time.

**Alleged offences against old Part 2 of the AMLI Act.**

Subitems 86(3) and (4) of Schedule 3 to this Bill will deal with the transition of certificates of analysis in relation to alleged offences against the old Part 2 of the AMLI Act.

Subitem 86(3) of Schedule 3 to this Bill will provide that the 2019 Bill will apply in relation to a substance in relation to which an offence against old Part 2 of the AMLI Act is or was alleged to have been committed before the commencement time, as if a reference in clause 414 of the 2019 Bill to “this Act” included a reference to the AMLI Act. This means that analysts may give a certificate under the 2019 Bill in relation to an offence that was alleged to have been committed before the commencement time.

Subitem 86(4) of Schedule 3 to this Bill will modify clause 415 of the 2019 Bill (admission of analyst’s certificate in proceedings) so that it may apply in relation to proceedings for offences that are alleged to have been committed before the commencement time.

**Division 6—Forfeiture of goods**

**Item 87 Goods forfeited to the Commonwealth before commencement time**

Subitem 87(1) of Schedule 3 to this Bill will provide an application provision for item 87. Item 87 will apply if:

(a) before the commencement time, a court had ordered the forfeiture to the Commonwealth of the goods (including any coverings in which the goods were contained) under subsection 18(1) of the 1982 Act or subsection 57(1) of old Part 2 of the AMLI Act; and

(b) the goods had not been sold or otherwise disposed of before the commencement time as permitted by subsection 18(3) of the 1982 Act or subsection 57(3) of old Part 2 of the AMLI Act (as applicable).

Subitem 87(2) of Schedule 3 to this Bill will provide that in the circumstances described in subitem 87(1), the 2019 Bill will apply in relation to the goods as if the court had ordered the forfeiture of the goods to the Commonwealth under subclause 416(1) of that Bill (which will deal with forfeitures of goods). In addition, subitem 86(3) will provide that for the purpose of the application of clause 416 of the 2019 Bill in relation to the goods, the Secretary may, if necessary, take possession of the goods.

This provision will have the effect of transitioning the forfeiture of goods from the existing legislation to the 2019 Bill so that the goods may be dealt with under the 2019 Bill after commencement time.
Item 88  

Forfeiture of goods in relation to which offence was committed before commencement time

Subitem 88(1) of Schedule 3 to this Bill will provide an application provision for item 88. Item 88 will apply if, after the commencement time, a person is:

(a) convicted of an offence against the 1982 Act, old Export Control Regulations, an old Export Control Order, old Part 2 of the AMLI Act, or this Bill in relation to particular goods; or

(b) found to have contravened a civil penalty provision of this Bill in relation to a particular good.

Subitem 88(2) of Schedule 3 to this Bill will provide that the 2019 Bill will apply in relation to the goods forfeited before the commencement time as if the reference in subclause 416(1) of that Bill:

(a) the expression “an offence against this Act” included a reference to an offence against the old Export Control Act, old Export Control Regulations, an old Export Control Order, old Part 2 of the AMLI Act, or this Act; and

(b) the expression “a civil penalty provision of this Act” included a reference to a civil penalty provision of this Act.

This provision will have the effect of transitioning the forfeiture of goods from the existing legislation if a person is convicted of an offence or contravened a civil penalty provision, to the 2019 Bill so that the goods may be dealt with under the 2019 Bill after commencement time.

Division 7—Reports to Parliament about live-stock

Item 89  

Reports to Parliament about exports of live-stock

Subitem 89(1) of Schedule 3 to this Bill will provide that the Secretary must give the Minister a report containing the information set out in subsection 57AA(3) of old Part 2 of the AMLI Act that is provided to the Secretary during the period of 6 months ending on 30 June 2021 in relation to the carriage of live-stock on any voyage to a port outside Australia (whether or not the carriage occurred during that period). The information listed in subsection 57AA(3) of the AMLI Act includes such matters as: the name of the exporter, the month and year in which the completion of the discharge of the live-stock occurred, the duration of the voyage and the total mortality for each type of live-stock.

Subitem 89(2) of Schedule 3 to this Bill will provide that the report must be given to the Minister before 1 August 2021 and subitem 89(3) will provide that the Minister must arrange for a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the House after the report is given to the Minister.

Item 89 will be a savings provision that will have a limited life and have the effect of maintaining the requirement to provide reports to Parliament about exports of live-stock. The ongoing requirements will be set out in clause 424 of the 2019 Bill.
Division 8—Miscellaneous

Item 90  Compensation for acquisition of property

Subitem 90(1) of Schedule 3 to this Bill will provide that if the operation of old Part 2 of the AMLI Act, or this Bill or the 2019 Bill as it will apply under this Bill (that is, because of a transitional provision), will result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Subitem 90(2) of Schedule 3 to this Bill will provide that subitem (1) will apply whether the acquisition of property occurred before or occurs after the commencement time. This will capture acquisitions under legislation that will be repealed by this Bill.

Subitem 90(3) of Schedule 3 to this Bill will provide that if the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:

(a) the Federal Court of Australia; or
(b) the Supreme Court of a State or Territory;

for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Item 91  Protection from civil proceedings

Item 91 of Schedule 3 to this Bill will provide that clause 430 of the 2019 Bill (which will relate to protection from civil proceedings) will apply as if a reference in clause 430 to “this Act” included a reference to the following:

(a) this Bill or an instrument made under this Bill (such as the transitional rules);
(b) the 1982 Act, or an instrument made under that Act, to the extent that it will continue to apply because of this Bill (for example, the audit provisions that have been saved under item 57);
(c) the 2019 Bill or an instrument made under that Bill, or the Regulatory Powers Act, to the extent that it will apply because of this Bill (for example see item 72).

Civil proceedings involve legal disputes between individuals based on one person claiming that the other has failed in his or her legal duty or involved a civil penalty. Protection from civil proceedings allows those required under this Bill, or a provision that will continue to apply after commencement, to make decisions appropriately without the fear of being sued. This protection will only apply if a person is acting appropriately in good faith.

The protection from civil proceedings will not extend to criminal offences for example theft or intentional destruction of documents or property.

Part 12—Transitional rules

Item 92  Transitional rules

Item 92 of Schedule 3 to this Bill will enable the Secretary to make rules, by legislative instrument, required or permitted by this Bill to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Bill.
Subitem 92(2) of Schedule 3 to this Bill will provide that the rules may also prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:

(a) the amendments or repeals made by this Bill; or
(b) the enactment of this Bill or the 2019 Bill.

The existing legislation governing the export of goods is complex, particularly the orders made under the 1982 Act. Given this complexity, there is the possibility that the transitional arrangements at the commencement time may not cover every potential circumstance. There may be unintentional and unforeseen consequences that may require additional transitional arrangements being put in place to avoid adversely impacting on international trade or placing unnecessary additional costs on individuals and businesses.

Transitional rules can address any unforeseen consequences and minimise the likelihood of any regulatory uncertainty during transition. Transitional rules will be an essential tool to deal with potential issues that may arise during transition from the existing law to the 2019 Bill. These rules will enable Australia’s trading reputation to be maintained, will provide for the continued export of goods from Australia and will minimise impacts on businesses that export these goods.

Subitem 92(3) of Schedule 3 to this Bill will provide that rules made under item 92 before 1 April 2023 may provide that provisions of this Bill, the 2019 Bill or any other Act or instrument will have effect with any modifications prescribed by the rules. Those provisions will have effect as if they were so modified. This will enable the rules to modify legislation but only for a period of two years from the commencement time. After this period, transitional rules will still be able to be made but they cannot make any modifications.

To complement subitem 92(3), subitem 92(4) of Schedule 3 to this Bill will provide that, subsection 12(2) of the Legislation Act 2003 (which deals with the retrospective application of legislative instruments) will not apply to transitional rules made under this item before 1 April 2023. This will mean that for two years after the commencement of this Bill, rules can be made that may apply retrospectively from the commencement time of this Bill rather than from when the rule is made or registered.

It is not intended or anticipated that persons will be disadvantaged through retrospective application of the rules (should they be required). Rather, the ability for the transitional rules to apply retrospectively means that any unintended consequences during the transition period can be remedied through applying transitional rules from the commencement time. This flexibility will enable the law to correct any unintended outcomes that may impact on the regulation of goods exported from Australia. The impacts of any retrospective application of the transitional rules would be dealt with in the making of those transitional rules, including any human rights implications.

Subitem 92(5) of Schedule 3 to this Bill will place limitations on the matters that may be covered by the rules. Subitem 92(5) will provide that the rules will not be able to do the following:

(a) create an offence or civil penalty;
(b) provide powers of:
   (i) arrest or detention; or
   (ii) entry, search or seizure;
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Bill or the 2019 Bill.

These matters are matters dealt with in primary legislation or instruments made by the Governor-General. The rules will be able to modify this Bill or the 2019 Bill but only to make transitional modifications, as paragraph 92(5)(e) will provide the rules cannot directly amend the text of this Bill or the 2019 Bill.

Subitem 92(6) of Schedule 3 to this Bill will be an explanatory provision specifying that the only limitation on the making of transitional rules will be the limitations set out in subitem 92(5)
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Export Control (Consequential Amendments and Transitional Provisions) Bill 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of this Bill


The transition from the 1982 Act and the AMLI Act, which currently control the export of certain goods, to the 2019 Bill needs to be effectively managed. This will ensure that exports are appropriately regulated or controlled, that access to international trading markets for Australian goods is maintained and Australia’s global trading reputation as a reliable source of safe and high-quality goods is not disrupted.

The Bill is being introduced to:

- repeal the 1982 Act to allow exports to be regulated under the 2019 Bill;
- repeal the parts of the AMLI Act which deal with the export of meat and live-stock to allow those exports to be regulated under the 2019 Bill;
- repeal a number of Acts that are currently redundant or will become redundant on the enactment of the 2019 Bill;
- make consequential amendments to Commonwealth legislation to reflect the repeal of the 1982 Act and parts of the AMLI Act, including amendments to refer to the 2019 Bill; and
- deal with the transition to the 2019 Bill from the 1982 Act and parts of the AMLI Act.

Schedule 1 to the Bill will repeal 17 Commonwealth Acts as they are redundant or will become redundant on the enactment of the 2019 Bill.

Schedule 2 to this Bill will make consequential amendments to nine Commonwealth Acts to remove provisions that will be incorporated in the 2019 Bill and update references to the 2019 Bill.

Schedule 3 to this Bill will set out the application, saving and transitional provisions and will include the power of the Secretary to make transitional rules. This power is necessary to ensure a seamless transition to the measures in the 2019 Bill.

The primary focus of Schedule 3 is to ensure continuity of export controls during the transition from the old to new legislation in a way that is not administratively or operationally
burdensome for the Commonwealth or business. The overall approach is one of maintaining existing policy approaches under the 1982 Act and parts of the AMLI Act, while aligning the powers, decisions and processes so that decisions made and processes followed under the 1982 Act and parts of the AMLI Act continue have effect under the 2019 Bill. To this extent, most decisions or powers exercised under the 1982 Act and parts of the AMLI Act will transition as though they were made or exercised under specific provisions of the 2019 Bill. The 1982 Act and parts of the AMLI Act provide similar powers to those in the 2019 Bill for the control of exports. However, there are some differences, which require some of the 1982 Act provisions to continue (or be saved) to operate until certain export control matters have been completed. This will minimise impacts on business and ensure market access for Australia’s exports is maintained. For consistency and to facilitate implementation, the transitional provisions have been set out in the same subject order as the 2019 Bill.

**List of human rights**

The Bill will engage, or has the potential to engage, the following rights:

- Article 14 of the ICCPR – Criminal process rights;
- Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy.

**Criminal process rights (Article 14 of the ICCPR)**

Article 14 of the ICCPR requires that, in the determination of criminal charges, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Various other rights are provided for persons charged with criminal offences.

**Monitoring and investigation powers**

This Bill (item 72 in Schedule 3) provides that certain compliance and monitoring powers in the 2019 Bill will apply for monitoring and enforcing requirements in this Bill and the old export control laws.

Clauses 326 and 329 of the 2019 Bill will apply the standard provisions for the use of monitoring and investigation powers in Parts 2 and 3 of the Regulatory Powers Act in relation to the offence and civil penalty provisions of the Bill. Accordingly, the monitoring and investigation framework for this Bill will be provided for by Parts 2 and 3 of the Regulatory Powers Act.

The application of the standard provisions in Parts 2 and 3 of the Regulatory Powers Act as well as the compliance and enforcement powers in Parts 4, 5 and 6 of Chapter 10 of the Bill, will engage the fair trial rights, minimum guarantees in the determination of a criminal charge, and other criminal process rights contained in Article 14 of the ICCPR.

Applying the standard provisions relating to monitoring powers in Part 2 of the Regulatory Powers Act to the Bill will enable an authorised person to enter any premises and exercise monitoring powers for the purpose of determining whether provisions subject to monitoring have been, or are being, complied with, or determining whether information subject to monitoring is correct. However, an authorised person may not enter the premises unless the
occupier has provided consent, the authorised person is in possession of a monitoring warrant, or the premises are part of an accredited property or registered establishment (see clauses 346 and 347 of the 2019 Bill and subitem 72(2) of this Bill).

A monitoring warrant may only be issued by a magistrate or a judge of certain specified courts of law. The general monitoring powers of an authorised person set out in Part 2 of the Regulatory Powers Act include the power to:

- search premises and any thing on the premises;
- examine or observe activities on the premises;
- inspect documents on the premises;
- ask persons on the premises questions and request the production of documents;
- bring equipment and materials onto the premises;
- inspect, examine, take measurements of or conduct tests on any thing on the premises;
- take images of things or make copies of documents;
- operate electronic equipment; and
- secure evidence of contraventions for up to 24 hours.

Further, if entry is under a monitoring warrant, the authorised person may:

- require persons on the premises to answer questions or produce documents relating to the provisions or information that are subject to monitoring; and
- secure electronic equipment for the purposes of obtaining expert assistance.

This Bill provides that subclause 329(1) of the 2019 Bill will apply in respect of an offence against or civil penalty provision of this Bill or an old export control law, and will mean these provisions will be subject to investigation under Part 3 of the Regulatory Powers Act.

Accordingly, an authorised person will be able to enter any premises and exercise investigation powers where the authorised person suspects on reasonable grounds that there may be material on the premises related to the contravention of an offence provision or a civil penalty provision subject to investigation under Part 3 of the Regulatory Powers Act. However, an authorised person may not enter the premises unless the occupier has provided consent or the authorised person is in possession of an investigation warrant.

An investigation warrant may only be issued by a magistrate or a judge of certain specified courts. The general investigation powers of an authorised person set out in Part 3 of the Regulatory Powers Act include the power to:

- search the premises and any thing on the premises
- inspect, examine, take measurements of or conduct tests on evidential material
- ask persons on the premises questions and request the production of documents
- bring equipment and materials onto the premises
- take images of things, and
- operate electronic equipment.

Further, if entry is under an investigation warrant, the authorised person may:

- seize a disk, tape or other storage device on the premises if:
• it is not practicable to put the evidential material into documentary form or transfer it to a separate disk, tape or other storage device brought onto the premises for the exercise of investigation powers; or
• possession of the equipment or disk, tape or other storage device by the occupier could constitute an offence;
• seize evidential material that is not of the kind specified in the warrant if:
  o the authorised person finds the thing in the course of searching for material of the kind specified in the warrant; and
  o the authorised person believes on reasonable grounds that:
    ▪ the thing is evidential material of another kind; or
    ▪ a related provision has been contravened with respect to the thing; or
    ▪ the thing is evidence of a contravention of a related provision; or
    ▪ the thing is intended to be used to contravene a related provision; and
  o the authorised person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its loss, concealment or destruction;
• require persons on the premises to answer questions or produce documents relating to evidential material of the kind specified in the warrant.

Parts 2 (monitoring) and 3 (investigation) of the Regulatory Powers Act provide questioning powers to authorised persons. Under subsection 24(3) of the Regulatory Powers Act, where entry is authorised by a monitoring warrant, the authorised person may require any person on the premises to answer questions or produce documents relating to information or provisions subject to monitoring. If the person fails to do so, this is an offence under subsection 24(5) of the Regulatory Powers Act. The criminal penalty for this offence is 30 penalty units.

Similarly, under section 54(3) of the Regulatory Powers Act an authorised person who enters premises under an investigation warrant may require persons on the premises to answer questions or produce documents relating to evidential material of the kind specified in the warrant. If the person fails to do so, this is an offence under subsection 54(5) of the Regulatory Powers Act. The criminal penalty for this offence is 30 penalty units.

Subsections 24(5) and 54(3) of the Regulatory Powers Act do not limit the person’s access to a fair trial or limit the other criminal process rights in any way. Sections 17 and 47 of the Regulatory Powers Act make it clear that the privileges against self-incrimination and legal professional privilege have not been abrogated by the monitoring and investigation powers provisions, including the offence provisions. These protections guarantee the criminal process rights protected in paragraphs 14(3)(d) and (g) of the ICCPR. The usual guarantees and criminal process rights will apply to these offences and are not abrogated by the application of Parts 2 and 3 of the Regulatory Powers Act to the Bill.

**Civil penalties**

**Nature of penalties**

Prescribing conduct that is subject to a civil penalty, and applying the civil penalty provisions of the Regulatory Powers Act, could engage criminal process rights if the imposition of civil penalties is classified as ‘criminal’ under international human rights law.

*Guidance Note 2: Offence provisions, civil penalties and human rights* (December 2014), which is published by the Parliamentary Joint Committee on Human Rights, states that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law.
When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a 'criminal' penalty for the purposes of the ICCPR. Determining whether penalties could be considered to be criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.

This Bill seeks to create three civil penalty provisions, which will all be expressly classified as civil penalties for the purposes of Australian domestic law. Items 15, 22, and 31 of this Bill will create civil penalties that apply pecuniary penalties in the form of a debt payable to the Commonwealth.

The purpose of these penalties is to encourage compliance with the obligations relating to the notices issued before commencement and deter non-compliance with the requirements in these notices. Non-compliance with these requirements could have significant and lasting negative consequences for Australia’s economy and trading relationships, as well as people who produce, prepare and export goods.

The civil penalty provisions do not seek to impose criminal liability and will not lead to the creation of a criminal record. The penalties will only apply to those persons, exporters and export-related businesses seeking to export goods from Australian territory, rather than to the public in general. Those persons will reasonably be expected to be aware of their obligations under the proposed legislation, and will have voluntarily sought the approval of the Commonwealth to engage in an activity that is regulated under very clear conditions. Further, the imposition of civil penalties is not dependent on a finding of guilt.

The proposed civil penalty provisions in this Bill will be subject to civil penalties up to 240 penalty units for individuals. Due to the proposed application of the standard provisions in Part 4 of the Regulatory Powers Act, the proposed civil penalty provisions will attract the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act. Subsection 82(5) of the Regulatory Powers Act provides that, where the person is not a body corporate, a pecuniary penalty must not be more than the penalty specified for the civil penalty provision. If the person is a body corporate, the pecuniary penalty must not be more than five times the pecuniary penalty specified for the civil penalty provision. This means that applicable civil pecuniary penalties for bodies corporate will be up to 1,200 penalty units.

The civil pecuniary penalties for the proposed civil penalty provisions in the Bill have been set by reference to the Guide. They seek to reflect the seriousness of the contravening conduct and the risk that the conduct may pose to Australia’s trading reputation, the integrity of the export system, or human, animal or plant life or health.

The proposed application of the standard provisions in Part 4 of the Regulatory Powers Act means that section 85 of the Regulatory Powers Act will apply to the proposed civil penalty provisions in the Bill. Section 85 of the Regulatory Powers Act provides that a relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character. However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions. There are no criminal consequences associated with civil penalty orders for multiple contraventions; for example, they do not carry the possibility of imprisonment. As such, these civil penalties are
not sufficiently severe that they could be considered to be criminal penalties for the purposes of Australia’s human rights obligations.

These factors suggest that the proposed civil penalty provisions in the Bill are civil rather than criminal in nature. Accordingly, the criminal process rights provided for by Articles 14 and 15 of the ICCPR are not engaged by the proposed civil penalty provisions in the Bill.

**Overlap of criminal and civil penalties**

Sections 90 and 91 in Part 4 of the Regulatory Powers Act will apply to civil penalty proceedings brought under this Bill. This is because this Bill will apply Part 7 of the 2019 Bill (see subitem 72(4)) and that part of the 2019 Bill will apply Part 4 of the Regulatory Powers Act. These clauses concern the relationship between criminal and civil penalty proceedings.

Section 90 of the Regulatory Powers Act clarifies that criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision, regardless of whether a civil penalty order has been made against the person in relation to the contravention. This section recognises the importance of criminal proceedings and criminal penalties in sanctioning contraventions of a triggering Act (i.e. an Act that seeks to apply the standard provisions of the Regulatory Powers Act), and ensures that criminal remedies are not precluded by earlier civil action.

Section 90 of the Regulatory Powers Act engages the process rights in Article 14 of the ICCPR, but will not limit those rights. Article 14(7) of the ICCPR provides that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”. This prohibition on double jeopardy is a fundamental safeguard in the common law of Australia. It means that a person who has been convicted or acquitted of a criminal charge is not to be re-tried for the same or substantially the same offence.

As section 90 of the Regulatory Powers Act permits both civil and criminal proceedings, but not multiple criminal proceedings for the same conduct, Article 14(7) of the ICCPR is not infringed. Further, section 88 of the Regulatory Powers Act provides that a court cannot make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Section 91 of the Regulatory Powers Act provides that evidence of information given, or evidence of the production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made), and
- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Section 91 of the Regulatory Powers Act ensures that information or documents produced during civil proceedings are not relied upon to support subsequent criminal proceedings,
unless those proceedings are criminal proceedings relating to falsifying evidence in civil proceedings. Accordingly, that section engages, but will not limit, the criminal process rights in Article 14 of the ICCPR.

Summary

The Bill is compatible with the criminal process rights provided for by Article 14 of the ICCPR because, to the extent that it engages those rights, it will not limit those rights.

**Right to protection from arbitrary interference with privacy (Article 17 of the ICCPR)**

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, and protects a person’s honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined “privacy”, the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

**Monitoring and investigation powers**

This Bill will apply the standard provisions in Parts 2 and 3 of the Regulatory Powers Act for the use of monitoring and investigation powers in relation to the offence and civil penalty provisions of the Bill. Accordingly, the monitoring and investigation framework for this Bill will be provided for by Parts 2 and 3 of the Regulatory Powers Act.

In addition, this Bill provides that the current power to enter, stop or detain a conveyance in Part 2 of the AMLI Act is taken to be an additional monitoring power under Part 2 of the Regulatory Powers Act.

To the extent that the measures in this Bill limit the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are reasonable, necessary and proportionate to the achievement of a legitimate objective.

This Bill pursues the legitimate objective of transitioning a regulatory framework that ensures that goods exported from Australia meet importing country requirements, comply with government or industry standards relating to the goods, and are traceable, thereby ensuring the integrity of goods and giving effect to Australia’s rights and obligations under international agreements to which Australia is a party.

Applying the standard provisions in Parts 2 and 3 of the Regulatory Powers Act and the additional monitoring power in the AMLI Act will ensure that the Australian Government, and authorised officers who perform functions or exercise powers on behalf of the Australian Government, will continue to be able to ensure the integrity of the export system and of any goods that are exported. These powers are necessary to ensure that these officers can monitor the integrity of the requirements in this Bill, assess compliance and investigate any potential non-compliance.
It is important to note that the monitoring and investigation powers under this Bill will enable authorised officers to obtain information and knowledge relating to the compliance of commercial export operations with the requirements of this Bill and importing countries. The information that will be able to be obtained under the monitoring and investigation provisions will allow the Australian Government to continue to ensure the integrity and traceability of goods that are exported, and that the goods meet importing country requirements and government or industry standards.

Regulatory Powers Act monitoring and investigation powers

The entry, monitoring, search, seizure and information gathering powers in the standard provisions of the Regulatory Powers Act are provided for by this Bill. The monitoring and investigation powers are necessary to enable the monitoring of compliance with this Bill and the collection of evidential material relating to contraventions. They are constrained in various ways as set out below, ensuring that their use is not arbitrary.

The Regulatory Powers Act protects against arbitrary interference with privacy, as, except in limited circumstances, the monitoring and investigation powers cannot be exercised without consent being given to the entry into the premises, or prior judicial authorisation in the form of a warrant. Where entry is based on the consent of the occupier, consent must be informed and voluntary, and the occupier of premises can restrict entry by authorised persons to a particular period. Additional safeguards are provided through provisions requiring authorised persons, and any persons assisting them, to leave the premises if the occupier withdraws their consent.

Entry to premises without consent or a warrant will only be provided for in the specific circumstances as set out in clauses 346 and 347 of Part 6 of the 2019 Bill, as applied by this Bill (item 72 of Schedule 3). These include:

- entering registered establishments or accredited properties for the purposes of determining whether this Bill has been, or is being, complied with, or whether information provided for the purposes of this Bill is correct;
- entering registered establishments or accredited properties when the authorised officer has reasonable grounds for suspecting there may be a particular thing on the premises which is related to the contravention of an offence provision or a civil penalty provision.

The powers of authorised officers to enter registered establishments or accredited properties without consent or a warrant are justifiable and reasonable to ensure compliance with this Bill. These premises are commercial premises, and their occupiers and managers will have voluntarily entered into the regulatory system. This is consistent with other provisions in Commonwealth legislation that involves licenced premises (for example, the Therapeutic Goods Act 1989 and Gene Technology Act 2000). Further, occupiers and managers will be responsible for export operations conducted at their premises. If those operations contravene the requirements of this Bill, it may result in the export of goods that do not meet Australian standards or importing country requirements and undermine the integrity of the regulatory framework provided for by this Bill. This may impact the confidence of trading partners in the regulation of exported goods and adversely impact market access for all. The consequence of non-compliant behaviour by one person may therefore impact the ability of others to export goods.
There are limits on the ability of authorised officers to enter accredited properties and registered establishments. Entry to premises without consent or a warrant will only be permissible during business hours, after announcement of the entry and explanation of the reasons for entry is given, and only for the legitimate purpose of determining whether the Bill is being complied with.

This Bill will give authorised officers who have entered premises under Part 2 of the Regulatory Powers Act (as that Part will apply to this Bill) and under clause 346 of the 2019 Bill (as applied by this Bill) the power to secure evidentiary material without consent or a warrant, pending the obtaining of an investigation warrant to seize it. The authorised officer will need to reasonably suspect that there is particular evidential material in or on the premises, that it is necessary to secure the material to prevent it from being concealed, lost or destroyed, and that it is necessary to secure the material without the authority of an investigation warrant because the circumstances are serious and urgent.

Similarly, this Bill will give authorised officers the power, without consent or a warrant, to stop and detain a conveyance, search the conveyance and anything in or on the conveyance for evidential material. The authorised officer may secure the evidential material if the authorised officer finds it there, pending obtaining an investigation warrant to seize it. The authorised officer will need to reasonably suspect that particular evidential material is in or on the conveyance, that it is necessary to stop and detain the conveyance and secure the material to prevent it from being concealed, lost or destroyed, and that it is necessary to exercise this power without the authority of an investigation warrant because the circumstances are serious and urgent. If the authorised officer finds other evidential material on the conveyance, the authorised officer will have the power also to secure that other evidential material pending the obtaining of an investigation warrant to seize it.

The powers under this Bill are necessary to ensure effective enforcement of this Bill in serious or urgent situations where evidential material is about to be concealed, lost or destroyed, and there is insufficient time to follow the usual procedures regarding the obtaining of warrants. They are only able to be exercised in limited circumstances, which provide constraints against the arbitrary use of the powers. These constraints ensure the powers are reasonable, necessary and proportionate to the objectives of the Bill.

The Regulatory Powers Act also provides restrictions on the issuing of a monitoring or investigation warrant. For example, in the case of an investigation warrant, an issuing officer may issue an investigation warrant only when satisfied, by oath or affirmation, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, evidential material on the premises. An issuing officer must not issue a warrant unless the issuing officer has been provided, either orally or by affidavit, with such further information as they require concerning the grounds on which the issue of the warrant is being sought. Such constraints on this power ensure adequate safeguards against arbitrary limitations on the right to privacy in the issuing of warrants.

In addition, an authorised person cannot enter premises under a warrant unless their identity card is shown to the occupier of the premises. If entry is authorised by warrant, the authorised person must also provide a copy of the warrant to the occupier of the premises. This provides for the transparent utilisation of the powers and mitigates arbitrariness and risk of abuse.

The monitoring and investigation powers may only be exercised in certain circumstances set out in the Regulatory Powers Act. For example, under section 52 of the Regulatory
Powers Act, the power to seize evidence of a kind not specified in an investigation warrant may only be exercised where:

- the authorised person finds the thing in the course of searching for material of the kind specified in an investigation warrant; and
- the authorised person believes on reasonable grounds that:
  - the thing is evidential material of another kind; or
  - a related provision has been contravened with respect to the thing; or
  - the thing is evidence of a contravention of a related provision; or
  - the thing is intended to be used to contravene a related provision; and
- the authorised person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its loss, concealment or destruction.

These constraints on the exercise of the powers limit their susceptibility to arbitrary use or abuse and ensure that their use is reasonable and proportionate in the circumstances. Accordingly, the monitoring and investigation powers are necessary, proportionate and reasonable in the pursuance of the legitimate objectives of this Bill.

Like the 2019 Bill, this Bill will modify the operation of Parts 2 and 3 of the Regulatory Powers Act to provide an authorised officer with the power to take, test and analyse samples of any thing on premises entered under section 18 or 48 of the Regulatory Powers Act for the purposes of exercising monitoring or investigation powers. This modification is necessary to allow an authorised officer to assess compliance with this Bill.

The power to sample any thing on any premises entered under section 18 or 48 of the Regulatory Powers Act for the purposes of exercising monitoring or investigation powers may not be exercised without a monitoring or investigation warrant or the occupier’s consent to enter the premises. Accordingly, the exercise of the power is constrained, and these constraints ensure its use is reasonable, necessary and proportionate to the objectives of this Bill.

This Bill will provide for the ability of authorised officers to enter premises (adjacent premises) adjacent to those on which they are to perform functions or duties, or exercise powers, as an authorised officer (including for the purposes of Part 2 or 3 of the Regulatory Powers Act).

To the extent that the measures in Part 4 of Division 10 of the Bill limit the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are reasonable, necessary and proportionate to the achievement of a legitimate objective.

This Bill pursues the legitimate objective of establishing transitional regulatory requirements that ensure goods exported from Australia meet importing country requirements, comply with government or industry standards relating to the goods, and are traceable, thereby ensuring the integrity of goods and giving effect to Australia’s rights and obligations under international agreements to which Australia is a party. Allowing authorised officers to access adjacent premises for the purposes of accessing other premises on which they will perform functions or duties, or exercise powers, as an authorised officer will ensure that the Australian Government, and authorised officers who perform functions or exercise powers on behalf of the Australian Government, can ensure the integrity of the export system and of any goods that are exported. These powers are necessary to ensure that these officers can access premises that may only be accessed through other premises, in order to monitor the integrity
of the requirements in this Bill, assess compliance and investigate any potential non-compliance.

The power to enter adjacent premises is provided for by law. The ability is necessary to enable authorised officers to access other premises to, amongst other things, monitor compliance with this Bill and collect evidential material relating to contraventions. This power is constrained in various ways as set out below, ensuring that its use is not arbitrary.

Part 4 of Chapter 10 of the 2019 Bill (as applied by this Bill) protects against arbitrary interference with privacy. An authorised officer cannot exercise the power to enter adjacent premises without consent being given to the entry into the premises, or prior judicial authorisation in the form of a warrant. Where entry is based on the consent of the occupier, consent must be informed and voluntary, and the occupier of premises can restrict entry by authorised persons to a particular period. Additional safeguards are provided through provisions requiring authorised persons, and any persons assisting them, to leave the premises if the occupier withdraws their consent. The authorised officer must show their identity card if the occupier requires, and must take all reasonable steps to minimise inconvenience to the occupier of those premises.

Part 4 of Chapter 10 of the 2019 Bill (as applied by this Bill) will also provide restrictions on the issuing of an adjacent premises warrant. An issuing officer may issue an adjacent premises warrant only when satisfied, by oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the adjacent premises for the purpose of gaining access to other premises to perform functions or duties, or exercise powers for the purposes of monitoring or investigating compliance with this Bill. Such constraints on this power ensure adequate safeguards against arbitrary limitations on the right to privacy in the issuing of warrants.

In addition, an authorised person cannot enter adjacent premises under a warrant unless their identity card is shown to the occupier of the premises. If entry is authorised by warrant, the authorised person must also provide a copy of the warrant to the occupier of the premises. This provides for the transparent use of powers and mitigates arbitrary use and risk of abuse.

These constraints on the exercise of the power to enter adjacent premises limit its susceptibility to arbitrary use or abuse and ensure that its use is reasonable and proportionate in the circumstances. Accordingly, the power to enter adjacent premises is necessary, proportionate and reasonable to achieve the legitimate objectives of this Bill.

Additional AMLI Act monitoring power

Subitem 72(3) of this Bill provides that the current power to enter, stop or detain a conveyance, in old Part 2 of the AMLI Act, is taken to be an additional monitoring power under Part 2 of the Regulatory Powers Act. This additional monitoring power will only apply if an authorised officer suspects on reasonable grounds that a conveyance contains meat or live-stock, or records relating to meat or live-stock. In addition, it may only be exercised during ordinary working hours. This Bill provides that this power is further limited to the circumstance of determining:

- whether old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order has been complied with; or
whether information provided for the purposes of old Part 2 of the AMLI Act, old AMLI Regulations or an old AMLI Order is correct.

This additional monitoring power under this Bill will enable authorised officers to continue to obtain information relating to the compliance of commercial export operations with the requirements in the AMLI Act. The information will allow the Australian Government to continue to ensure the integrity and traceability of goods that are exported, and that the goods meet importing country requirements and government or industry standards.

This additional monitoring power is an existing and longstanding power in the AMLI Act and persons subject to the power would be familiar with it. The additional monitoring power is limited to determining compliance with old Part 2 of the AMLI Act, and will therefore have limited relevance in the future. This is because regulated persons will increasingly be subject to the requirements in the 2019 Bill and this additional monitoring power will not be used for determining compliance with the requirements in the 2019 Bill.

To the extent that this additional monitoring power limits the rights protected under Article 17 of the ICCPR, these limitations are not arbitrary, and are reasonable, necessary and proportionate to the achievement of a legitimate objective. This is because the additional monitoring power would:

- be an existing and longstanding power with which regulated persons, including current licence holders, would be familiar;
- apply in limited circumstances (meat and live-stock) and only for determining compliance with measures in the old AMLI Act;
- apply for a limited time, as regulated persons become subject to the requirements in the 2019 Bill, for which the additional monitoring power would not apply;
- be necessary to achieve the legitimate objective of ensuring the integrity and traceability of meat and live-stock that are exported, and ensure that market access for Australia’s exports can be maintained.

**Conclusion**

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

(Circulated by authority of the Minister for Agriculture, Senator the Hon. Bridget McKenzie)